

**No. 11667**  
**IN THE**  
**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

---

**TODD C. FAULKNER,**

**Appellant,**

**vs.**

**JOHN T. GIBBS,**

**Appellee.**

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**TRANSCRIPT OF RECORD**

**(In Two Volumes)**

**VOLUME I**

**(Pages 1 to 292, Inclusive)**

**Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division**





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the United States District Court  
Southern District of California  
Central Division

No. 5566-Y Civil

JOHN T. GIBBS,

Plaintiff,

vs.

TODD C. FAULKNER and EDNA D. FAULKNER,  
Doing Business Under the Fictitious Firm Name of  
FAWN,

Defendants.

### FIRST AMENDED COMPLAINT

For Infringement of U. S. Patent No. 1,906,260

Now comes the Plaintiff and for his cause of action  
against the Defendants herein alleges:

#### I.

The Plaintiff, John T. Gibbs, is a citizen of the United States, and a resident of Port Washington, County of Nassau, and State of New York.

#### II.

The action arises under the Patent Laws of the United States, U. S. C. A., Title 35, as hereinafter more fully appears.

#### III.

Plaintiff is informed and believes and therefore alleges that the Defendants herein are doing business under the fictitious firm name of Fawn, and have their principal and [2] established place of business at The Pike, Long

Beach, California, where, and possibly elsewhere in the United States, said defendants have committed and are now committing the acts of infringement hereinafter complained of.

IV.

On May 2, 1933, United States Letters Patent No. 1,906,260 were duly and legally issued to Plaintiff for an invention in games; and since that date Plaintiff has been and still is the owner of those Letters Patent.

V.

That on or about June 4, 1936, in a suit entitled John T. Gibbs v. T. Z. R. Amusement Corporation, et al., filed in the United States District Court for the Eastern Division of New York, and officially reported in 14 Fed. Supp. 957, following a trial of the cause, said Letters Patent were adjudged to be good and valid in law as to all of the claims thereof and Plaintiff was granted a permanent injunction and an accounting for damages and profits against the defendants, and that said permanent injunction was issued and served on the infringers in said action on the 7th day of June, 1936.

VI.

Defendants have for a long time past been and still are infringing those Letters Patent by making, selling, and using games embodying the patented invention, and will continue to do so unless enjoined by this Court, and said infringement has been and is deliberate, intentional, and willful.

## VII.

Plaintiff has placed the required statutory notice on all games manufactured and sold by him under said Letters Patent. [3]

Wherefore, Plaintiff demands a preliminary and final injunction against further infringement by Defendants and those controlled by Defendants, an accounting for profits and damages, an assessment of costs against Defendants, and that said damages be trebled.

HUEBNER, MALTBY & BEEHLER and  
ALBERT M. HERZIG

By Albert M. Herzig

Attorneys for Plaintiff [4]

[Verified.]

[Endorsed]: Filed Aug. 29, 1946. [5]

[Title of District Court and Cause]

DEFENDANTS' INTERROGATORIES

Under Rule 33 F. R. C. P.

To the Plaintiff John T. Gibbs:

Attached hereto is an affidavit by George Hatherell which illustrates and describes Game Apparatus now being used by defendants herein, which apparatus as illustrated and described in said affidavit will in the following interrogatories be referred to as "said apparatus".

1.

Do you charge that said apparatus, or any part thereof, infringes any of the claims of U. S. Patent No. 1,906,260 issued to John T. Gibbs on May 2, 1933 (hereinafter referred to as "said patent"). [6]

2.

If your answer to Interrogatory No. 1 is in the affirmative, please state which claims of said patent you charge are infringed.

3.

If your answer to Interrogatory No. 1 is in the affirmative, please state with respect to each of the claims listed in your answer to Interrogatory No. 2 wherein the elements of said claims are found in said apparatus.

4.

Does said apparatus include:

"supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

5.

Does said apparatus include:

"means whereby when all of the indicators in any group of any one of said units have been operated to complete a winning play, the indicators on all of the units except the winning unit will be de-energized, while the indicators of the winning unit will remain energized."

6.

Does said apparatus include:

"an independent supplementary signal at each of said units for signalling a winning play to the players." [7]

7.

Does said apparatus include:

"means under the control of an operator for opening and closing the circuits of all of said units simultaneously at will."

8.

Does said apparatus include:

"means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units."



9.

If your answer to any of the interrogatories Nos. 4 to 8 inclusive is in the affirmative, please point out in detail, using the numbers appearing on Exhibit "A" of said affidavit of George Hatherell, the part or parts of said apparatus which you contend respond to the wording of such interrogatory so affirmatively answered.

You are required to answer under oath all of the foregoing interrogatories and each and every subdivision thereof.

Dated at Los Angeles, California, this 7th day of January, 1947.

GERALD DESMOND and  
ROBERT W. FULWIDER

By Robert W. Fulwider  
Attorneys for Defendants [8]

Received copy of the within Interrogatories this 7 day of Jan., 1947. Huebner, Maltby & Beehler and Herbert A. Huebner, Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 7, 1947. [9]

[Title of District Court and Cause]

## FIRST AMENDED ANSWER

Come now the Defendants above named, Todd C. Faulkner and Edna D. Faulkner, and file this their first amended Answer to the first amended Complaint on file herein as follows:

### I.

Defendants deny generally and specifically each and every allegation contained in Paragraphs 4, 6 and 7 of said Complaint, and with respect to said Paragraph 4 allege affirmatively that Plaintiff has granted to others the whole or such exclusive rights under said Patent 1,906,260 as to preclude him from maintaining this action.

### II.

Answering Paragraph 3 of said Complaint Defendants admit that the Defendant Todd C. Faulkner is doing business under the fictitious firm name "Fawn" and has a place of business on the [10] Pike, Long Beach, California, but deny that the Defendant Edna D. Faulkner is doing business at said address or has any interest in, or control of, any business or property owned or conducted by the Defendant Todd C. Faulkner other than such interest as she may have under the community property laws of the State of California.

### III.

Answering Paragraph 5 of said Complaint Defendants state that they are without knowledge or information sufficient to form a belief as to the allegations therein contained and upon that ground deny the same.



As Further and Affirmative Defenses Defendants Allege:

IV.

That said Patent No. 1,906,260 and each and every claim thereof is invalid for lack of novelty because:

A. The subject matter claimed in said patent had, long prior to the alleged invention thereof by Plaintiff or more than two years prior to his application for said patent, been described in various United States and foreign patents and in various publications among which are the following:

United States			
<u>Patentee</u>	<u>Patent No.</u>	<u>Date</u>	
McGregor	1,260,691	Mar.	26, 1918
Higuchi	1,454,968	May	15, 1923
Irsch	1,458,884	June	12, 1923
Prina	1,518,754	Dec.	9, 1924
Chester	1,598,711	Sep.	7, 1926
Esmarian	1,612,912	Jan.	4, 1927
Hayashi	1,614,471	Jan.	18, 1927
Mader	1,622,330	March	29, 1927
Steinmetz	1,630,869	May	31, 1927 [11]
Nakashima	1,678,573	July	24, 1928
Wallace	1,697,701	Jan.	1, 1929
Schneider	1,788,336	Jan.	6, 1931
MacKenzie	754,377	Mar.	8, 1904
Sutton	994,963	June	13, 1911
Huggins	1,773,227	Aug.	19, 1930

Catalogue copyrighted 1929 by H. C. Evans & Company located at 1528 West Adams, Chicago.

B. The subject matter claimed in said patent had, long prior to the alleged invention thereof by Plaintiff been known and used in the United States by the applicants for the patents listed in Paragraph A above at the addresses set forth in said patents, by the authors and publishers of the publications listed in Paragraph A above at the addresses set forth in said publications, and by many other persons whose names and addresses are at present unknown to Defendants but for which they are causing diligent search to be made.

C. The subject matter claimed in said patent had, long prior to the alleged invention thereof by Plaintiff, or more than two years prior to his application for said patent, been in public use or on sale in the United States by the applicants for the patents listed in Paragraph A above at the addresses set forth in said patents, by the authors and publishers of the publications listed in Paragraph A above at the addresses set forth in said publications, and by many other persons whose names and addresses are at present unknown to Defendants but for which they are causing diligent search to be made. [12]

## V.

That said Patent No. 1,906,260 and each and every claim thereof is invalid for lack of invention because:

A. Each and every element and feature disclosed in said patent as well as the use, function and effect thereof, both singly and in divers associations and combinations, was well known in the art long prior to the alleged invention thereof by Gibbs, and the conception and production of the subject matter claimed in said patent did not amount to invention but was nothing more than the exer-

cise of the ordinary and expected skill of persons familiar with the art to which said patent relates.

B. The alleged invention claimed in said patent is not a patentable combination but is a mere aggregation of old elements and parts which do not cooperate in any new or unexpected way or produce any new or unexpected result.

C. Said claims and each of them fail to describe a statutory subject of invention in that they do not describe any new or useful art, machine, manufacture or composition of matter but on the contrary merely set forth an attempt to patent a function or result.

## VI.

That said Patent No. 1,906,260 and each and every claim thereof is invalid for failure to comply with the provisions of R. S. 4888 (35 USC 33) in that:

A. Neither the alleged invention claimed in said patent nor the manner of making or using the same is described in said patent in such full, clear, concise or exact terms as to enable any person skilled in the art to which it appertains to make or use the same.

B. Said claims do not particularly point out and distinctly claim the part, improvement or combination which the applicant therefor claims as his invention or discovery.

## VII.

That said Patent No. 1,906,260 and each and every claim [13] thereof is invalid because the subject matter of said claims was not the sole invention of Plaintiff but was the joint invention of Plaintiff and one James H.

Cannon of Los Angeles, California, which fact was well known to Plaintiff at the time he filed his application for said patent.

### VIII.

That said Patent No. 1,906,260 and each and every claim thereof was so limited by requirement of the Commissioner of Patents during the prosecution of said patent as not to be susceptible of a construction which will include any device or apparatus now being made; used or sold by Defendants.

### COUNTERCLAIM

By way of counterclaim against Plaintiff herein these Defendants allege:

### IX.

That said Patent No. 1,906,260 and each and every claim thereof is invalid for the reasons heretofore set forth in Paragraphs IV to VIII, inclusive, of this Amended Answer and Defendants hereby replead and incorporate said paragraphs herein by reference the same as though set forth herein in full.

### X.

That no structure made, used or sold by Defendants or either of them prior to the filing of the Complaint herein infringed any claim of said Patent No. 1,906,260.

### XI.

That since the filing of the Complaint in this action the Defendant Todd C. Faulkner has used and is now using at 101 West Pike, Long Beach, California, the game apparatus described and illustrated in the affidavits of

George Hatherell on file herein, [14] which apparatus said Defendant alleges does not infringe said Patent No. 1,906,260.

XII.

That Plaintiff herein has charged in Case No. 6180-Y filed in this Court against George Hatherell, and elsewhere, that said apparatus mentioned in Paragraph XI infringed Patent No. 1,906,260 alleged to be owned by said Plaintiff. However, Plaintiff has failed and refused to file a supplemental Complaint herein with respect to said apparatus although repeatedly requested by the Defendants herein so to do.

XIII.

That there is therefore a controversy existing between Plaintiff and the Defendant Todd C. Faulkner in this action which under 28 USC 400 is cognizable by this Court and should be litigated as a counterclaim in this action.

Wherefore Defendants pray:

1. That Patent No. 1,906,260 and each and every claim thereof be adjudged invalid and void,
2. That Defendants and each of them be adjudged not to have infringed said Letters Patent or any claim thereof,
3. That the Complaint on file herein be dismissed with costs to the Defendants, including their attorneys' fees incurred herein,
4. For judgment on the counterclaim filed herewith that they have not, prior to the filing of said counterclaim, infringed said Letters Patent, and



5. For such other and further relief as to this Court shall seem just and proper.

Dated at Los Angeles, California, this 10th day of February, 1947.

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider

Attorneys for Defendants [15]

[Title of District Court and Cause]

### STIPULATION

It is hereby stipulated that Defendants may file the foregoing Amended Answer and Counterclaim, subject to Plaintiff's right to move to strike all or any part of said Answer and Counterclaim at any time prior to the completion of the trial of this case.

Dated at Los Angeles, California, this 10th day of February, 1947.

ALBERT M. HERZIG

Attorney for Plaintiff

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider

Attorneys for Defendants

Approved and So Ordered:

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Feb. 10, 1947. [16]

[Title of District Court and Cause]

PLAINTIFF'S ANSWERS TO DEFENDANTS'  
INTERROGATORIES

John T. Gibbs, plaintiff herein, answers defendants' interrogatories filed January 7, 1947, to the extent required by the order of the Court entered January 27, 1947, as follows:

I.

Answering interrogatory 1, plaintiff charges that the apparatus purported to be illustrated and described in the affidavit of George Hatherell, referred to in defendants' interrogatories, infringes plaintiff's United States Patent No. 1,906,260 in suit. Said Hatherell affidavit and attached diagram are erroneous and incomplete in respects which will be explained at the trial. [17]

II.

Answering interrogatory 2, the claims of the patent in suit asserted to be infringed by said apparatus are claims 3, 6, 7, 8, 9, and 10.

III.

Answering interrogatory 3, the same elements are found in the "modified" Fawn games as were present in the original games, any changes being insignificant and temporary, and of such nature that the games can easily and quickly be restored to their original condition. Application of the claims to the original games has already been made in the procedures upon the preliminary injunction. If any alternative construction of the claims is required to be applied to the games as now being temporarily operated, the following description will apply,

reference being had to the photographs of the charged Fawn structures and description of the mode of their operation filed October 10, 1946, as well as to the wiring diagram, Exhibit "A", attached to the aforesaid affidavit of George Hatherell:

Claim 3: The game apparatus comprising a board is element 25 in the photographs, having a plurality of contact devices thereon, which are numbered 51 and 58 in the photographs, adapted to be engaged by an object, which is the ball 27 moved over the board by a player, a plurality of indicators which comprises the lamps in the panel annunciator 21, means for electrically connecting said indicators with a source of electric current and with said contact devices which obviously appears from the wiring diagram comprising wires 85 and 91 and associated structures and circuits, said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups which is obvious from the illustrations and [18] description. The means for energizing said indicators as the associated contact devices are operated comprises the switches 58 and associated mechanical and electrical elements. The electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized comprises the circuit represented by lines 77 and 78' and the obviously related electric lines. The supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized, comprises the mercury switch M and associated mechanical and electrical elements including solenoid 98 and switch 84 whereby the lamps on the annunciator displaying the winning play are caused to remain illuminated after the winning play has been completed.



Claim 6: The game apparatus comprises a plurality of units each being an individual machine 20 and an annunciator panel 21 electrically connected together through circuits 77, 78, each of said units including a plurality of contact devices which are switches 58 and associated elements, and a plurality of indicators which are the lamps in the annunciator panel 21 corresponding in number and subdivided into corresponding groups as is obvious from the illustrations. The means for electrically connecting the contact devices with the corresponding indicators comprises lines 88 and 85, the means for electrically connecting said units together and with a source of electric current comprises lines 77 and 78, 75 and 76, said indicators being adapted to be operated when and as objects, which are the balls 27, are moved by the players into engagement with the contact devices, which are the switches 58. The means whereby when all of the indicators in any group of one of said units have been operated to complete a winning play, the indicators on all of the units except the winning unit will be de-energized, while the indicators [19] at the winning unit will remain energized, for the purpose described, comprises the motor operated mercury switch 205 and its related circuits which de-energizes all non-winning units, and the mercury switch M and its related elements and circuits which cause the lights of the winning unit to remain energized.

Claim 7\* adds to claim 6 an independent supplementary signal at each of said units for signaling a winning play to the players. This feature is partially identified in the "modified" Fawn games as the solenoid 98 and switch 84 which are incompletely shown and described and which in actual practice cause an audible clicking sound and a flicker of the lights on the winning board.

Claim 8 is applied the same as claim 7, by including the Fawn handle 207 and associated mechanism.

Claims 9 and 10 are applied to the Fawn games in a manner clear from the preceding description.

Interrogatories 4 to 8, both inclusive, are not required to be answered.

Dated: February 17, 1947.

JOHN T. GIBBS  
Plaintiff [20].

[Verified.]

Received copy of the within Answer this 17th day of February, 1947. Robert W. Fulwider, Attorney for Defendants.

[Endorsed]: Filed Feb. 18, 1947. [21]

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[Title of District Court and Cause]

REPLY TO DEFENDANT'S COUNTER-CLAIM  
CONTAINED IN FIRST AMENDED ANSWER

Now comes the plaintiff, and replying to the counter-claim of the defendant's, set forth in their first amended answer, and alleges as follows:

I.

Answering Paragraphs IX and X, the plaintiff denies each and every, generally and specifically, all and singular, the allegations therein contained.

## II.

Answering Paragraph XI of said counterclaim, the plaintiff denies each and every, generally and specifically, all and singular, the allegations therein contained, except that plaintiff admits that defendant, Todd C. Faulkner, has used since the filing of the complaint in this action, and is now using at 101 West Pike, Long Beach, California, a game apparatus, [22] and plaintiff alleges that said game apparatus infringes plaintiff's patent No. 1,906,260.

Wherefore, the plaintiff prays that the patent in suit be found valid and infringed by all forms of defendant's apparatus, and that the plaintiff have judgment against the defendant for damages arising from the manufacture and use of said apparatus, and that the plaintiff have judgment against the defendant for costs and attorneys' fees on account of said counterclaim, and for such other and further relief as to this court seems just.

Dated: February 18, 1947.

HUEBNER, MALTBY & BEEHLER,  
HERBERT A. HUEBNER and  
ALBERT M. HERZIG

By Herbert A. Huebner

Received copy of the within reply this 20 day of Feb., 1947. R. Fulwider, Attorney for Defs.

[Endorsed]: Filed Feb. 20, 1947. [23]

[Title of District Court and Cause]

## ALTERNATE FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY DEFENDANTS

The defendant Todd C. Faulkner offers no objection to plaintiff's proposed Findings I-VII, inclusive, IX, XI, XV and XVI, but does object to proposed Findings VIII, X, XII, XIII and XIV, and suggests that they be re-written as hereinafter set forth. Defendant also proposes that several additional Findings be made by the Court as set forth herein, following the re-written Findings.

To facilitate the Court's consideration of defendant's contentions, this document has been restricted to the Findings and Conclusions themselves and a separate memorandum is filed herewith setting forth defendant's reasons for his suggested Findings and Conclusions.

Re: Finding No. VIII.

Defendant proposes that this Finding be amended by adding thereto the following:

“, except as to claim 9 thereof which is ambiguous [24] and indefinite in that it recites ‘means for holding said signal circuit open until all of the indicators of any group on each of said units have been energized, and for closing said signal circuit when all of the indicators of any unit have been energized,’ which structure is not found in the Gibbs specification. On the contrary, in the Gibbs game the supplementary signal circuit is closed when all of the indicators in any group of any one unit are energized. Claim 10 being dependent upon claim 9,

is therefore, ambiguous and indefinite for the same reasons."

Re: Finding No. X.

Defendant proposes that this Finding be re-written as follows:

X.

"The defendant offered in evidence as prior art the following United States Letters Patent:

<u>Patentee</u>	<u>Patent No.</u>
Nakashima, Y.	1,678,573
Hayashi, A. T.	1,614,471
Esmarian, C.	1,612,912
Mader, D. C.	1,622,330
Schneider, L. <u>et al.</u>	1,788,336
McGregor, D. R.	1,260,691
Chester	1,598,711
Wallace	1,697,701
Higuchi, M.	1,454,968
Prina, F. <u>et al.</u>	1,518,754
Irsch, J. <u>et al.</u>	1,458,884
Steinmetz, H.	1,630,869
Blackmore, H. J.	1,280,136
Lynch, C. J.	1,685,329 [25]

The defendant also offered in evidence as prior art the catalog of H. C. Evans & Company, Copyrights 1929. None of the aforesaid prior art patents or the catalog anticipate the subject matter of the Gibbs Letters Patent No. 1,906,260, and furnish no basis for any finding or conclusion that the said Gibbs patent lacks invention, although the various elements of the Gibbs claims are found separately in the prior art patents."



Re: Finding No. XII.

Defendant proposes that this Finding be re-written as follows:

## XII.

"The defendant Todd C. Faulkner has been and now is operating game apparatus known as the Fawn Game at 101 West Pike, Long Beach, California. Said Fawn Game has been in two different forms, one identified as the 'original' Fawn game was in use by the defendant at the time of the filing of the Complaint herein on July 17, 1946, and is described and illustrated in Plaintiff's Exhibit 2 and Defendant's Exhibit F. Said original Fawn game was manufactured under the direction, at the expense, and by the authority of the defendant Todd C. Faulkner during the year 1944. After the Complaint herein was filed and shortly prior to November 4, 1946, the defendant Todd C. Faulkner caused certain modifications and alterations to be made in said 'original' Fawn game as disclosed by the evidence taken during the trial. Said modified and altered Fawn game is hereinafter referred to as the 'altered' Fawn game, and is before this Court as the result of defendant's counterclaim, the plaintiff's reply thereto, and the evidence presented at the trial. Said 'altered' [26] Fawn game is illustrated in Plaintiff's Exhibit 9 and Defendant's Exhibits F and J. A description of each of said games appears in subsequent Findings."

Re: Finding No. XIII.

Defendant proposes that this Finding be re-written as follows:

### XIII.

"Prior to the time the defendant Faulkner had his original Fawn game constructed he had observed a competitive electrified Bingo game operated by one Arthur Loeff on the Pike in Long Beach, California, each unit of which game had a board with a plurality of holes therein and an annunciator panel with lights corresponding to the holes which were illuminated when a ball passed through the holes. There is no evidence that Faulkner at any time had access to the internal mechanism of said Loeff game or that the mechanism employed in the original Fawn game was in any way similar to the mechanism in the Loeff game. The board, annunciator panel and method of play of said Loeff game was similar to an earlier game operated at Santa Monica, California, by the plaintiff Gibbs, but there is no evidence that the mechanism of the Loeff game was in any way similar to the mechanism of said Gibbs game. The testimony of the designer of said Loeff game was that he had never had access to the mechanism of a Gibbs game and had not seen a copy of the Gibbs patent until February, 1946, long after the building of said Loeff game.

"The defendant's original Fawn game may, therefore, be said to have been derived from the Gibbs patented game to the extent that it is a competitive game which employs a game board with a plurality of holes therein, [27] an annunciator panel with indicator lights corresponding to said holes, and that a winning combination results from the illumination of a horizontal, vertical or diagonal

group of five indicator lights, and that upon a winning combination being completed on one game unit the other game units are de-energized. Insofar as the record shows, the time clock feature and the method of play of the altered Fawn game was novel and original with defendant Todd C. Faulkner."

Re: Finding No. XIV.

Defendant proposes that this Finding be re-written as follows:

#### XIV.

"Plaintiff asserts infringement by the defendant Todd C. Faulkner of claims 3, and 6 to 10, both inclusive, of said Letters Patent No. 1,906,260. The said Letters Patent, as to said claims, is not anticipated, displays invention, and is valid."

Defendant ~~also~~ proposes the following additional Findings:

#### XVII.

The game described and claimed in the Gibbs patent No. 1,906,260 comprises a number of game units, each to be played by a separate player. Each game unit comprises a game board having 25 holes arranged in longitudinal and lateral rows through each of which a ball rolled over the board by a player may pass and be returned to the player. There is an annunciator panel for each game board which contains 25 indicator lamps arranged in vertical and horizontal rows. The ball in passing down through any hole will operate a contact device to light the indicator lamp corresponding to that hole. The [28] contact device at each hole is only momentarily closed as the ball passes through the hole and each indi-



cator lamp has associated with it a relay which, when energized by the momentary closing of its contact device, operates to maintain its lamp circuit energized. Each relay when energized closes contacts in series circuit relation with the contacts of other relays associated with lamps in the same horizontal, vertical or diagonal group of indicator lamps so that when five indicator lamps comprising either a complete horizontal, vertical or diagonal group of indicator lamps are energized, the relays for the lamps in that group will complete a "win" circuit.

The electric power to the indicator lamps for each of the units extends through the contacts of a "feed" relay and each unit is also provided with a "win" relay which is energized by the completion of any "win" circuit in that unit. The "win" relay when energized, simultaneously performs the following functions:

(a) Energizes a supplementary signal lamp on top of the annunciator panel of that unit signifying that that player has completed a winning row of five lights;

(b) Energizes an audible signal circuit to ring bell 69 to notify all of the players that one of the units has won;

(c) Energizes the feed relay of the winning unit to break its normal power circuit to the indicator lamps;

(d) Completes an auxiliary power circuit to the indicator lamps on the winning unit to maintain them lighted; and

(e) Energizes the feed relays of all other game units, thereby immediately de-energizing all of the other units and stopping the game.

To re-start the Gibbs game the operator momentarily opens a main power switch to de-energize the "win" relay on the winning unit, and the players may then start the play. [29]

### XVIII.

The original Fawn game comprised a number of game units, each to be played by a separate player, each unit including a game board over which a player repeatedly projected a ball. The game board had 24 holes through which the ball could pass; the holes being arranged in two lateral rows of 12 holes each. The ball in passing through any of the holes on its way to be returned to the player for additional play operated a paddle, one of which was located beneath each hole. Each paddle included a switch in circuit with an indicator light on an annunciator panel for that unit. The panel included 25 lamps arranged in vertical and horizontal rows in the same manner as shown in the Gibbs patent.

Each of the paddles when depressed by the passage of the ball released a pin on one of a series of wheels beneath the game board, the wheels having additional pins engaging "win" bars so that when all of the paddles for any horizontal, vertical, or diagonal group of indicator lamps had been depressed, the vertical "win" bar, the horizontal "win" bar, or the diagonal "win" bar would be moved by the wheels to cause a mercury switch to close to complete a "win" circuit.

The completion of a "win" circuit energized a "win" relay which performed the following functions:

(a) Energized a supplementary signal lamp on top of the annunciator panel;

(b) Disconnected the normal power circuit supplying power to the indicator lamps of the winning unit;

(c) Closed an auxiliary power circuit to the indicator lamps on the winning unit;

(d) Actuated a main power relay to disconnect the supply of power to all of the other units, thus stopping the game.

The game was re-started by the operator actuating a restart lever common to all of the units which lifted all of the paddles [30] back to their pin engaging position and opened the indicator lamp circuits which had been closed by the depressed paddles. This action also opened the mercury switch, de-energizing the "win" relay and allowing the main power switch to re-close.

This game had no audible signal corresponding to the Gibbs audible signal 69. Likewise, it did not have individual lamp relays for maintaining the indicators energized.

## XIX.

The altered Fawn game includes the same structural units with their game boards, annunciator panels, the paddles beneath the holes in the game boards, the pin and wheel mechanisms for controlling the mercury switches and the same mechanism for resetting the paddles when a game is to be restarted, as were in the original Fawn game.

However, the supplementary signal light on each of the unit annunciator panels has been eliminated. The "win" relay and circuits controlled by it have been changed so that the operation of the "win" relay no longer controls the main power switch and consequently all of the units

remain energized even though the "win" relay on one or more of the units is actuated.

The stopping of the game is controlled solely by a time clock operated switch. The clock is started at the beginning of a game when the operator actuates the restart lever and the game continues for the time period for which the clock is set. At the end of the pretermed time the clock opens the main power switch, stopping the game and stopping the clock until it is restarted by the operator of the games. The completion of a winning row of indicator lights on one unit does not stop the game, but, on the contrary, all other players continue the play until the end of the clocked time period, thereby making it possible to have several winners. The lights on the other units are not extinguished as a [31] result of the completion of a winning row of lights on any of the game boards. The lights are extinguished only at the end of the time period.

In the altered Fawn game there is no audible signal corresponding to the Gibbs audible signal bell 69.

## XX.

In the game of the Gibbs patent the moment one player is won, the play of the other players stops automatically but in the altered Fawn game there can be any number of winners and the game is not stopped by the occurrence of a winner.

In the game of the Gibbs patent only one player may win and there must always be a winner because the game does not stop until one player has won, but in the altered Fawn game the time clock automatically stops all the game units, making it possible that a game may end without a winner.

XXI.

The original Fawn game embodies the structure set forth in claims 3, 6, 7 and 8 of the Gibbs patent. The subject matter of claim 9 is not present in the original Fawn game since there are no means present

“for closing a signal circuit when all of the indicators of any unit have been energized.” (See Finding No. VIII.)

XXII.

The structure recited by claim 10 is not present in the original Fawn game since there is no

“audible signal commonly connected with all of said units and adapted to be operated upon the closing of the supplementary signal circuit.” [32]

XXIII.

The subject matter of claim 3 is not present in the altered Fawn game, since with the elimination of the signal lamps formerly on the annunciator panels there is no longer any structure which meets the last element of claim 3, to-wit,

“supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized.”

XXIV.

The subject matter of claim 6 and its dependent claims 7 and 8 is not found in the altered Fawn game since there is no structure therein which meets the terms of the last element of claim 6, to-wit:

“means whereby when all of the indicators in any group of any one of said units have been operated to



complete a winning play the indicators on all of the units except the winning unit will be de-energized."

Further, with respect to claim 7 the altered Fawn game omits the

"independent supplementary signal at each of said units for signally a winning play."

Further, with respect to claim 8 there is no structure in the altered Fawn game to meet either of the elements especially recited in claim 8, to-wit:

"an independent supplementary signal at each of said units for signaling a winning play."

or

"means under the control of an operator for opening and closing the circuits of all of said units simultaneously at will." [33]

## XV.

The structure of claim 9 is not found in the altered Fawn game since there is no

"supplementary signal circuit on each of said units,"

nor is there any

"means for holding said signal circuit open until all of the indicators of any group on each of said units have been energized,"

nor is there any

"means for closing said signal circuit when all of the indicators of any unit have been energized"

nor is there any

“means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units.”

## XXVI.

The structure of claim 10, dependent upon claim 9, is not found in the altered Fawn game structure for the reasons set forth in the preceding Finding, and additionally there is no structure in the altered Fawn game which meets the express limitation of claim 10, to-wit,

“an audible signal commonly connected with all of said units and adapted to be operated upon the closing of the supplementary signal circuit of any of said units.”

There is no audible signal in connection with any of the game units in the altered Fawn game. [34]

Defendant offers no objection to Conclusions 1 and 2 proposed by plaintiff, but in lieu of Conclusions 3 and 4 proposes the following:

3. The defendant Todd C. Faulkner has infringed claims 3, 6, 7 and 8 of Letters Patent No. 1,906,260 by the manufacture and use of his original Fawn game, but has not infringed claims 9 and 10 by said original Fawn game. The altered Fawn game of the defendant Todd C. Faulkner has not and does not infringe any of the claims of said patent.

4. The plaintiff shall have judgment against the defendant Todd C. Faulkner for an injunction against further use of his original Fawn game and for an accounting and recovery of damages suffered by plaintiff by reason of said infringement, but neither party shall recover costs or attorneys' fees herein in view of the findings and conclusions above set forth.

It is believed that the foregoing Findings and Conclusions are consistent with the Court's decision in this case and should, to the extent noted, replace those proposed by plaintiff.

It is suggested that if the foregoing meets with the Court's approval that counsel for one of the parties be instructed to prepare comprehensive Findings and Conclusions for the Court's signature.

Respectfully submitted,

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider

Attorneys for Defendants [35]

Received copy of the within Alternate Findings & Conclusions this 24 day of March, 1947. Herbert A. Huebner, Attorney for Plaintiff.

[Written]: Rejected LRY J.

[Endorsed]: Filed Mar. 31, 1947. [36]

[Title of District Court and Cause]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause was tried before me commencing February 19, 1947, the parties being present in Court and appearing by their respective attorneys. Evidence was taken and the cause was argued, at the conclusion of which I delivered from the bench an outline of my conclusions and decision. I find and decide as follows:

### FINDINGS OF FACT

#### I.

This action was instituted by plaintiff for infringement of United States Letters Patent No. 1,906,260 under the patent laws of the United States (U. S. C. Title 35) and this Court has jurisdiction of the parties and of the cause. The defendant [37] filed a Counterclaim to which plaintiff replied. This Court also has jurisdiction of the Counterclaim.

#### II.

The defendant Todd C. Faulkner is doing business under the fictitious firm name of Fawn, having his principal place of business at the Pike, Long Beach, California.

#### III.

The defendant Edna D. Faulkner is not associated with defendant Todd C. Faulkner in said business.

## IV.

On May 2, 1933, the United States Letters Patent No. 1,906,260 were duly and legally issued to plaintiff John T. Gibbs for an invention in games; and since that date plaintiff has been and still is the owner of those Letters Patent.

## V.

The said Letters Patent No. 1,906,260 have been commercially reduced to practice in that plaintiff has built and installed games embodying the subject matter of said patent at various places throughout the United States and at one place in England, and has granted numerous licenses to others to operate the said patented game at various places throughout the United States.

## VI.

Said patent No. 1,906,260 has heretofore been held valid and infringed as to all of its claims in an action entitled Gibbs v. T. Z. R. Amusement Corporation, et al. (U. S. District Court for the Southern District of New York, Eastern Division) as evidenced by Plaintiff's Exhibit 3, the opinion of the Court being reported at 14 Fed. Supplement 957. The said Gibbs patent No. 1,906,260 has also been held valid and infringed upon stipulation of the parties by consent Judgments in the following actions: [38]

John T. Gibbs v. Vincent Anderson, D. C. Conn.  
Civil #1556.



John T. Gibbs and Kahn's Amusement Corporation  
v. Stanley Gersh, et al., D. C. Ed. N. Y. Civil  
#5728

John T. Gibbs and Kahn's Amusement Corporation  
v. Scientific Machine Corporation, et al., D. C.  
Ed. N. Y. Civil #2175

John T. Gibbs, et al. v. Surfco Amusement Corp.,  
et al., D. C. Ed. N. Y. Equity #8577

John T. Gibbs v. Loeff, et al., D. C. S. D. Calif.  
Civil #5143-O'C

John T. Gibbs v. Hicks, et al., D. C. S. D. Calif.  
Civil #5565-W

## VII.

With the exception of the defendant herein, the public in general has been and is acquiescing in the validity of the said patent.

## VIII.

The said patent No. 1,906,260 is neither ambiguous nor indefinite in either the specification or the claims, but is fully understandable by anyone skilled in the art and complies with revised statutes Section 4888.

## IX.

John T. Gibbs, plaintiff, is the sole inventor of the subject matter of said Letters Patent No. 1,906,260, and one James H. Cannon is not a joint inventor or any inventor thereof.

## X.

The defendant offered in evidence as prior art the following United States Letters Patent: [39]

<u>Patentee</u>	<u>Patent No.</u>
Nakashima, Y.	1,678,573
Hayashi, A. T.	1,614,471
Esmarian, C.	1,612,912
Mader, D. C.	1,622,330
Schneider, L. et al.	1,788,336
McGregor, D. R.	1,260,691
Chester	1,598,711
Wallace	1,697,701
Higuchi, M.	1,454,968
Prina, F. et al.	1,518,754
Irsch, J. et al.	1,458,884
Steinmetz, H.	1,630,869
Blackmore, H. J.	1,280,136
Lynch, C. J.	1,685,329

The defendant also offered in evidence as prior art the catalog of H. C. Evans & Company, Copyrighted 1929. None of the aforesaid prior art patents or the catalog disclose, or anticipate, or suggest either singly or collectively the subject matter of the Gibbs Letters Patent No. 1,906,260, and furnish no basis for any finding or conclusion that the said Gibbs patent lacks invention.

## XI.

The plaintiff has caused a notice complying with the marking statute R. S. Section 4900, (U. S. C. Title 35, Section 49) to be placed on all games embodying said Letters Patent No. 1,906,260 manufactured by or with the authority of the plaintiff.

## XII.

The defendant Todd C. Faulkner has been and now is operating game apparatus known as the Fawn game at 101 West Pike, Long Beach, California. Said Fawn game is in two forms, one [40] identified as the original form which was in use at the time of the filing of the complaint herein on July 17, 1946, and which is described and illustrated in Plaintiff's Exhibit 2. Said original Fawn game was manufactured under the directions and at the expense of and by the authority of the defendant Todd C. Faulkner during the year 1944. After the complaint herein was filed and shortly prior to the granting by this Court on November 4, 1946, of a preliminary injunction against further operation of said original game, the defendant Todd C. Faulkner caused certain modifications or alterations to be made in said Fawn game as disclosed by the evidence taken during the trial. Said modified or altered Fawn game is hereinafter referred to as the altered Fawn game and is before this Court as a result of defendant's counterclaim, the plaintiff's reply thereto, and the evidence presented at the trial. Said altered Fawn game embodied the same physical structure, function and appearance as the original Fawn game except that certain electric globes at the top of each unit of said game were removed, an electric time switch for limiting the duration of play was added as an accessory, and a slight change of wiring of the electric circuits was made to accommodate and utilize the time switch. Said alterations are illustrated in the wiring diagram, Plaintiff's Exhibit 9. The altered Fawn game can be restored to its exact original identity by a few minutes work of an electrician involving merely a change in the terminal connection of a wire. The electrical wiring for the original

circuits remains intact in the altered game with the exception of a difference in said terminal connection of one wire. The original Fawn game embodies the subject matter of the Gibbs patent No. 1,906,260 as defined in claims 3, and 6 to 10, both inclusive; and the altered Fawn game embodies the subject matter of the Gibbs patent as defined in claims 3, 9 and 10. [41]

### XIII.

The defendant Todd C. Faulkner derived the Fawn game from an examination of a similar game being operated by one Arthur Loeff on the Pike in Long Beach, California. The said Loeff game had in turn been copied from a game embodying the subject matter of the said Gibbs patent operated by the plaintiff Gibbs at Santa Monica, California, and on the Pike at Long Beach, California. The said Fawn game was thus not original with the defendant Todd C. Faulkner, but was derived from the said Gibbs patent.

### XIV

Plaintiff asserts infringement by the defendant Todd C. Faulkner of claims 3, and 6 to 10, both inclusive, of said Letters Patent No. 1,906,260. The said Letters Patent, as to said claims, is not anticipated, displays invention, is valid, and has been infringed as to all of said claims by the defendant Todd C. Faulkner in the manufacture and operation of the original Fawn game. The said patent has been infringed as to claims 3, 9 and 10 by the defendant Todd C. Faulkner in causing the alterations to be made and in operating the altered Fawn game.

XV.

The actions and operations of the defendant as set forth in Paragraph 12 of these Findings were without authorization from the plaintiff.

XVI.

These findings apply to the issues raised and tried by the Complaint, Amended Answer, Counterclaim, and reply thereto. [42]

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter involved herein and of the parties hereto under the Patent Laws of the United States (U. S. C. Title 35).

2. The United States Letters Patent in suit No. 1,906,260 as to claims 3, and 6 to 10, both inclusive, is good and valid in law.

3. The defendant Todd C. Faulkner has infringed claims 3, and 6 to 10, both inclusive, of said Letters Patent No. 1,906,260 by the manufacture and use of the original Fawn game, and has infringed claims 3, 9 and 10 of said Letters Patent by the alterations caused to be made and by the use of said altered Fawn game. Said infringement has caused and is causing the plaintiff irreparable loss, injury and damage.

4. The plaintiff shall have judgment against the defendant Todd C. Faulkner for an injunction against further infringement, for an accounting and recovery of damages suffered by the plaintiff, for the costs of this



action, including fees and charges of the Court Reporter and the attorneys' fees to be fixed by this Court, and dismissing defendants' Counterclaim.

Dated this 28th day of March, 1947, at Los Angeles, California.

LEON R. YANKWICH

United States District Judge

The foregoing Findings of Fact and Conclusions of disapproved Law are ~~approved~~ as to form, as provided in Rule 7, this 19 day of March, 1947. Objections will be filed in due course.

ROBERT W. FULWIDER

Attorney for Defendants

Approved as to form under local Rule 7.

HUEBNER, MALTY & BEEHLER

HERBERT A. HUEBNER and

ALBERT M. HERZIG

By Herbert A. Huebner

Attorneys for Plaintiff [43]

Received copy of the within Findings of Fact and Conclusions of Law this ..... day of ....., 1947.  
Robert W. Fulwider, Attorney for Defendant.

[Endorsed]: Filed Mar. 31, 1947. [44]

In the United States District Court  
Southern District of California  
Central Division

No. 5566-Y Civil

JOHN T. GIBBS,

Plaintiff,

vs.

TODD C. FAULKNER and EDNA D. FAULKNER,  
Doing Business Under the Fictitious Firm Name  
of FAWN,

Defendants.

INTERLOCUTORY JUDGMENT

This cause having come on to be heard before the Court on oral testimony and documentary evidence and physical exhibits received and argued by counsel;

It Is Ordered, Adjudged and Decreed as follows:

I.

That the United States Letters Patent No. 1,906,260 issued May 2, 1933, for a game to John T. Gibbs is good and valid in law as to claims 3, 6, 7, 8, 9 and 10, and that the title of said patent has been and is vested in plaintiff.

II.

That the complaint is dismissed as to defendant Edna D. Faulkner without recourse on the bond or otherwise for the [45] preliminary injunction granted. No costs are allowed the dismissed defendant.

## III.

That defendant Todd C. Faulkner has infringed claims 3, 6, 7, 8, 9 and 10 of said Letters Patent No. 1,906,260 by making and using the original Fawn game described and illustrated in Plaintiff's Exhibit 2.

## IV.

That the defendant Todd C. Faulkner has infringed claims 3, 9 and 10 of said Letters Patent No. 1,906,260 by making and using the altered Fawn game, said alterations being illustrated in Plaintiff's Exhibit 9.

## V.

That the plaintiff John T. Gibbs recover of the defendant Todd C. Faulkner general damages for said infringement.

## VI.

That this cause be referred to the Honorable David B. Head as master to ascertain and take and report to the Court an account of said general damages and to affix the same.

## VII.

That a perpetual injunction be issued out of and under the Seal of this Court restraining the defendant Todd C. Faulkner, his officers, agents, servants, employees and attorneys and those persons in active concert or participating with him, and each and every one of them, from in any manner, directly or indirectly, making, using or selling, or causing to be made, used or sold any game ap-

paratus embodying the invention claimed in claims 3, 6, 7, 8, 9 and 10 of said Letters Patent No. 1,906,260, and specifically from directly or indirectly making, using or selling, or causing to be made, used or sold, a game apparatus exemplified by Plaintiff's Exhibits 2 and 9, and from in any way infringing upon any of said claims of said Letters Patent or upon the rights [46] of the plaintiff under said claims.

### VIII.

That defendants' Counterclaim is dismissed upon the merits and with prejudice.

### IX.

That the defendant Todd C. Faulkner pay to the plaintiff his costs in this suit and Counterclaim to be taxed in the sum of \$522.63 dollars, and reasonable attorneys' fees in the sum of \$500.00 dollars, and that the plaintiff have execution for such costs and attorneys' fees.

Dated at Los Angeles, California, this 28th day of March, 1947.

LEON R. YANKWICH

United States District Judge

7

Approved as to form under Local Rule 8.

HUEBNER, MALTBY & BEEHLER  
HERBERT A. HUEBNER and  
ALBERT M. HERZIG

By Herbert A. Huebner

Attorneys for Plaintiff

Decree disapproved as to Form, this 19th day of March, 1947. A substitute decree will be filed under Rule 7.

ROBERT W. FULWIDER

Attorney for Defendants

Judgment entered Mar. 31, 1947. Docketed Mar. 31, 1947. C. O. Book 42, page 402. Edmund L. Smith, Clerk; by John A. Childress, Deputy. [47]

Received copy of the within Interlocutory Judgment this 24 day of March, 1947. Herbert A. Huebner, Attorney for Plaintiff.

[Endorsed]: Filed Mar. 31, 1947 [48]

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[Title of District Court and Cause]

### NOTICE OF APPEAL

To John T. Gibbs and His Attorneys Huebner, Maltby & Beehler, and Albert M. Herzig:

Notice is hereby given that Todd C. Faulkner, the defendant above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the interlocutory decree entered in this action on March 31, 1947.

ROBERT W. FULWIDER

Attorney for Defendants

[Endorsed]: Filed & mld. copy to Huebner, Maltby & Beehler, Apr. 4, 1947. [49]



[Title of District Court and Cause]

CASH BOND

To the Clerk of the United States District Court, Southern District of California, Central Division:

Whereas, on March 31st, 1947 in the above-entitled action a judgment was rendered against me and I have duly filed a Notice of Appeal from said judgment, and

Whereas, on April 7, 1947, the Honorable Leon R. Yankwich, Judge of the above-entitled Court, set the amount of the supersedeas bond on said appeal in the amount of Fifteen Thousand Dollars (\$15,000.00).

Now, Therefore, in accordance with Local Rule 8 of the above-entitled Court I herewith deposit with you the sum of Fifteen Thousand Dollars (\$15,000.00) cash, of which I am the owner, as a supersedeas bond on said Appeal.

The condition upon which said deposit is made is that if I [50] shall prosecute my said Appeal with effect and attorneys' fees,

satisfy said judgment in full, together with <sup>A</sup> costs, interest and damages for delay, if for any reason said Appeal is dismissed, or if said judgment is affirmed and satisfied in full, or such modification of the judgment attorneys' fees,

and such costs, <sup>A</sup> interest and damages as the Appellate Court may adjudge and award, then said deposit shall be returned to me, otherwise, it shall be applied by you to satisfy said obligations.

I hereby consent and agree that in case of default or contumacy on my part, the Court may, as provided in Rule 8(C), upon notice to me of not less than ten (10)

days, proceed summarily and render judgment against me in accordance with my obligation above-recited, and award execution thereon.

TODD C. FAULKNER

Defendant-Appellant

State of California

County of Los Angeles—ss.

On this 10th day of April, 1947, before me, Louise McPherson, a Notary Public in and for said County and State, personally appeared Todd C. Faulkner, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above-written.

LOUISE McPHERSON

Notary Public in and for said County and State  
My Commission Expires Mar. 11, 1949.

as amended & initialed

Examined  $\Delta$  and recommended for approval as provided in Rule 8.

ROBERT W. FULWIDER

Attorney for Defendant-Appellant [51]

as amended and initialed

Approved as to form  $\Delta$  as provided in Rule 7.

HERBERT A. HUEBNER

Attorney for Plaintiff-Appellee

Approved, this 10 day of April, 1947.

BEN HARRISON

United States District Judge

[Endorsed]: Filed Apr. 10, 1947. [52]

[Title of District Court and Cause]

ORDER EXTENDING TIME FOR DOCKETING  
APPEAL AND FILING RECORD THEREON

The Defendant-Appellant, Todd C. Faulkner, having on April 4, 1947 filed his Notice of Appeal in the above-entitled action and having made application to this Court for an extension of time in which to docket said appeal and file the record thereon, and the Court being advised in the premises, and good cause appearing therefor:

It Is Hereby Ordered that the time in which said Defendant-Appellant, Todd C. Faulkner may docket his appeal in this cause and file his record on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby extended to

P.J.M. J. Tuesday, June 10th  
and including ~~Monday, June 30~~, 1947.

Dated at Los Angeles, California, this 5th day of May, 1947.

PAUL J. McCORMICK

Judge of the United States District Court for the  
Southern District of California

Presented by:

Robert W. Fulwider

Attorney for Defendant-Appellant

[Endorsed]: Filed May 5, 1947. [53]

[Title of District Court and Cause]

STATEMENT OF POINTS ON WHICH DEFENDANT-APPELLANT INTENDS TO RELY ON APPEAL

Comes now the Defendant-Appellant Todd C. Faulkner, and in accordance with Rule 75(d) of the Federal Rules of Civil Procedure states that he intends to rely upon the following points on the appeal of this case:

1. The Court erred in holding that claims 3, 6, 7, 8, 9 and 10 of the patent in suit were valid.
2. The Court erred in holding that claims 3, 6, 7, 8, 9 and 10 of the patent in suit were infringed by the defendant Todd C. Faulkner in making and using the original Fawn game described and illustrated in Plaintiff's Exhibit 2.
3. The Court erred in holding that the defendant Todd C. Faulkner has infringed claims 3, 9 and 10 of the patent in suit by making and using the altered Fawn game as illustrated in Plaintiff's Exhibit 9. [54]
4. The Court erred in dismissing defendants' counterclaim with prejudice.
5. The Court erred in holding that the defendant Todd C. Faulkner pay to the plaintiff his costs of suit and reasonable attorneys' fees.
6. The Court erred in holding that the public in general has acquiesced in the validity of the patent in suit.
7. The Court erred in holding that the patent in suit was neither ambiguous nor indefinite in either the specification or claims.

8. The Court erred in holding that the plaintiff has caused a notice complying with the marking status R. S. 4900 to be placed on all games embodying the alleged invention of said Letters Patent in suit manufactured by or with the authority of plaintiff.

9. The Court erred in holding that the altered Fawn game of the defendant embodied the same physical structure, function and appearance as the original Fawn game except for certain allegedly minor differences.

10. The Court erred in holding that the electrical wiring for the original circuits in the Fawn game remained intact in the altered Fawn game with the exception of the difference in the terminal connection of one wire.

11. The Court erred in holding that the defendant Todd C. Faulkner derived the Fawn game from a game operated by one Arthur Loeff on the Pike in Long Beach, California, and also erred in holding that the said Loeff game had been copied from the game embodying the subject matter of the said Gibbs patent in suit.

12. The Court erred in not finding the patent in suit invalid for lack of novelty for the reasons set forth in Paragraph 4 of defendants' First Amended Answer.

13. The Court erred in not finding the patent in suit invalid for lack of invention because of the reasons set forth in Paragraph 5. [55] of defendants' First Amended Answer.

14. The Court erred in not finding the patent in suit invalid for failure to comply with the provisions of R. S.



4888 as set forth in Paragraph 6 of said Amended Answer.

15. The Court erred in not holding that the patent in suit was so limited by requirement of the Commissioner of Patents as not to be susceptible of a construction which includes any device or apparatus made, used or sold by defendant.

16. The Court erred in its interpretation of the evidence and in applying an unduly limited construction to the patent in suit when considering the issue of validity and then an unduly broad construction to said patent when considering the issue of infringement.

17. The Court erred in not holding that the omission of an element of a patented combination avoids infringement.

18. The Court erred in not adopting the alternate Findings of Fact and Conclusions of Law presented by defendant-appellant.

Dated at Los Angeles, California, this 20th day of May, 1947.

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider

Attorneys for Defendant-Appellant [56]

(Affid. of Service by Mail.)

[Endorsed]: Filed May 21, 1947. [57]

[Title of District Court and Cause]

ORDER FOR TRANSMITTAL OF REPORTER'S  
TRANSCRIPT AND ORIGINAL EXHIBITS

The reporter's transcript of the proceedings in the above-entitled cause being on file with the Clerk of this Court, and it being represented by defendant's attorney that both plaintiff and defendant have copies of said transcript, and defendant having filed his Notice of Appeal herein and having designated the entire reporter's transcript for inclusion in the record on appeal, now, upon defendant-appellant's request;

It Is Hereby Ordered that the Court copy of the reporter's transcript of the testimony and proceedings upon the trial of the above-entitled cause be included in the record on appeal and forwarded to the Clerk of the Ninth Circuit Court of Appeals in lieu of the copies of said transcript required under Rule 75(b) of the Federal Rules of Civil-Procedure.

Good cause appearing therefor, [62]

It Is Further Ordered that pursuant to Rule 75(i) of the Federal Rules of Civil Procedure that plaintiff's original Exhibits Nos. 1, 2 and 9, and defendants' original Exhibits A-J, inclusive, in the above entitled case be sent to the Ninth Circuit Court of Appeals in lieu of copies thereof.

Dated at Los Angeles, California, this 21st day of May, 1947.

PAUL J. McCORMICK  
Judge of the United States District Court

Presented by:

Robert W. Fulwider

Attorney for Defendant-Appellant

Received copy of the within Order this ..... day of May, 1947. ...., Attorney— for Plaintiff-Appellee.

[Endorsed]: Filed May 21, 1947. [63]

[Title of District Court and Cause]

### ORDER EXTENDING TIME

The Court being advised that the Defendant-Appellant filed his Notice of Appeal on April 4, 1947, and good cause appearing therefor:

It Is Hereby Ordered that the Plaintiff-Appellee may have one week from the date of this Order, to-wit: until June 10, 1947, within which to file his Counter Designation of the record on appeal herein and the time within which this appeal may be docketed and filed with the Clerk of the United States Circuit Court of Appeals is hereby extended from Tuesday, June 10, 1947, to and including Tuesday, June 17, 1947.

Dated at Los Angeles, California, this 3rd day of June, 1947.

LEON R. YANKWICH

Judge

Received copy of the within Order Extending Time this ..... day of June, 1947. Robert W. Fulwider, Attorney for Defendant.

[Endorsed]: Filed Jun. 3, 1947. [64]

[Title of District Court and Cause]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 68, inclusive, contain full, true and correct copies of First Amended Complaint; Defendants' Interrogatories Under Rule 33, F. R. C. P.; First Amended Answer with Counterclaim; Stipulation and Order re Amended Answer; Plaintiff's Answers to Defendants' Interrogatories; Reply to Defendant's Counterclaim Contained in First Amended Answer; Alternate Findings of Fact and Conclusions of Law Proposed by Defendants; Findings of Fact and Conclusions of Law; Interlocutory Judgment; Notice of Appeal; Cash Bond; Order Extending Time for Filing and Docketing Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal; Designation of Contents of Record on Appeal; Order for Transmittal of Reporter's Transcript and Original Exhibits; Order Extending Time; Appellees Counter-Designation of Contents of Record on Appeal; Order for Transmittal of Original Exhibits and Order Extending Time for Filing Record and Docketing Appeal which, together with original Reporter's Transcript and Original Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8-A to 8-D and 9 and original Defendant's Exhibits A, B, C, D, E, F, G,

H, I and J, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24 day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk



[Title of District Court and Cause]

Honorable Leon R. Yankwich, Judge Presiding.

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, February 19, 1947.

Appearances:

For the Plaintiff: Huebner, Maltby & Beehler, by Albert M. Herzig, Esq., and Herbert A. Huebner, Esq., 410 Walter P. Story Building, Los Angeles, California.

For the Defendant: Robert W. Fulwider, Esq., 520 General of America Bldg., Los Angeles, California; and Gerald Desmond, Esq.

\* \* \* \* \*

I offer in evidence Gibbs patent, as Plaintiff's Exhibit No. 1.

The Court: All right.

The Clerk: Plaintiff's Exhibit 1 in evidence. [5\*]

[Note: Plaintiff's Exhibit No. 1 will be found in the Book of Exhibits at page 293.]

\* \* \* \* \*

Mrs. Faulkner, wife of the defendant, Mr. Faulkner, was originally made a party defendant. Our information was that she was operating the business with Mr. Faulkner. The defendant's original answer admitted that, and in the preliminary injunction the same facts were [6], admitted, and she was served, I believe, with the preliminary injunction.

\*Page number appearing at top of page of original Reporter's Transcript.

Now, subsequent developments appear to me to establish that she actually was not engaged with Mr. Faulkner in business, and I think it proper, on behalf of the plaintiff, to dismiss this case as to Mrs. Faulkner on condition that she was present in court, and through her attorney waived any recovery by way of damages in connection with bond on the preliminary injunction.

Mr. Fulwider: We so stipulate, your Honor.

Mr. Huebner: Does Mrs. Faulkner, present in court, agree to that?

Mr. Fulwider: Mrs. Faulkner is present.

Mrs. Faulkner: I agree to that.

The Court: What is the status of the firm? Does the record show that Mr. Faulkner is doing business under a fictitious name, and has filed a certificate of fictitious name?

Mr. Huebner: I don't know whether he has filed a certificate, but in the amended answer he admits he is doing business under the fictitious name and style of Fawn.

Mr. Fulwider: I might say that Mrs. Faulkner had herself declared a sole trader some years before this happened. The deposition brought out that she had no [7] connection whatever other than a wife's normal interest in the business of her husband.

The Clerk: Does the record show this case is dismissed as to her?

The Court: Yes, it is dismissed as to Mrs. Faulkner, she having openly, in court, through her attorney, waived any recourse on the bond given on the issuance of the temporary injunction.

Mr. Huebner: I next desire to offer in evidence as an exhibit the description of the original Fawn game, which

is in the court's file,—the description which was used in connection with the motion for preliminary injunction.

The Court: Is this the document, with a lot of photographs attached to it?

Mr. Huebner: Yes, your Honor, a series of photographs, and a wiring diagram at the back. I have not asked Mr. Fulwider in advance, but I presume he will be willing to stipulate that that is a fair description includes with illustrations of the Fawn game as originally operated by the defendant on the Pike at Long Beach.

Mr. Fulwider: I would be willing to stipulate to that, your Honor, to the extent that it does describe the game substantially accurately.

The Court: It may be received as descriptive of the game first operated by the defendant, and will be marked [8] by reference. That is the last document.

The Clerk: Plaintiff's Exhibit 2.

[Note: Plaintiff's Exhibit No. 2 will be found in the Book of Exhibits at page 309]

Mr. Huebner: To simplify the controversial facts I suggest a stipulation that that was operated by the defendant within six years prior to the filing of the complaint in this action.

Mr. Fulwider: We will so stipulate.

Mr. Huebner: Plaintiff charges infringement of claims 3, 6, 7, 8, 9 and 10, by the original Fawn game, and charges that the same claims are infringed by the so-called modified or altered Fawn game, which we will come to later.

I should like to request, through the court, a statement before the day's session is over, from defendant's counsel

as to which of the numerous prior art patents and alleged publications he will rely upon, so that we may concentrate our examination upon those in the preparation for rebuttal.

Mr. Fulwider: We will be very happy to do that. I will give it to you at recess.

Mr. Huebner: Now, your Honor, the altered Fawn game is in the case by understanding of counsel. Defendant's counsel attempted to get it in by proceedings, and we are perfectly willing that the altered Fawn game be an issue in this case, but I should explain this much: So far as procedure goes, the defendant has filed a counter claim [9] presumably under the theory of declaratory judgment, asserting this altered game and that a controversy exists, and that the question should be litigated.

Our ten days for replying to that counter claim has not yet expired. We have been busy in this case, and have not served a reply to the counter claim. We will join issue on the counter claim, in due time, with your Honor's permission.

The Court: Then this case is not at issue, unless there be a stipulation. If I had known that I would not have permitted the matter to come to trial. I don't allow new issues to be brought in, and leave it up in the air. That would be trying it piecemeal, which I do not permit.

Mr. Huebner: We will probably have the reply in before the day is over.

The Court: That is all right, if you join issues.

Mr. Huebner: I would like to offer in evidence a certified copy from a portion of the reporter's transcript in the case of Gibbs v. T. Z. R. Corporation, Eastern District of New York, No. E-7717. A copy of this has already been furnished to defendant's counsel.

Mr. Fulwider: Which one is that?

Mr. Huebner: That is part of the transcript of the testimony.

Mr. Fulwider: I object to the offer of that in evidence, your Honor. I can't see that it has any relevancy to the [10] issues in this case.

Mr. Huebner: It shows, your Honor, what prior art was considered by the Eastern District Court.

The Court: Each decision in each district is an independent action. There is no such thing as *res judicata*, and while the court may receive evidence of decrees, the testimony on which it is based is not material, because each case consists of mixed questions of law and fact which must be entered into anew.

I have disagreed with eastern judges, and I have disagreed with local judges. Nothing is binding upon this court, unless it be from a decision of the Supreme Court. This is the only lawsuit in which the doctrine of *res judicata*.

Mr. Huebner: It is some evidence—

The Court: If you show the decree, yes; but the rationalization of the judge does not mean anything to me, because I may arrive at an entirely different conclusion.

Mr. Huebner: We have the findings of fact, and conclusion of law, which I am next going to offer. But I believe there were some patents offered in evidence by defendant in that case, which are not referred to in the findings of fact, and conclusions of law.

The Court: I do not know of any case, since I have been on the bench, where anything but the decree has ever [11] been offered. Certainly not in your cases, and I know of no one else's.



Mr. Huebner: I have not had occasion to offer it.

The Court: I have been trying cases for 12 years, and have written so much, I cannot find anything new to write about in the realm of patents. If that is true, I will let you take the testimony and be bound by it. Are you willing to do that?

Mr. Huebner: Rest on the eastern case?

The Court: Without additional testimony.

Mr. Huebner: I think we might.

The Court: You won't have any record. I will sustain the objection to this. I will receive the findings and decree rendered for whatever consideration they are entitled to, not as a precedent, but merely because they are permissible to show that other districts have considered this patent, and have held the patent valid. It also goes to the knowledge of the defendant. He is supposed to know—I don't know whether he made a Chinese copy or not.

Mr. Huebner: I will offer in evidence a certified copy of the findings of fact and conclusions of law in the T. Z. R. case.

The Clerk: Plaintiff's Exhibit 3.

[Note: Plaintiff's Exhibit No. 3 will be found in the Book of Exhibits at page 344.]

The Court: They may be received as Plaintiff's exhibits. [12]

Mr. Huebner: For the purpose of the record, for whatever value it may have, your Honor, I should like to note an exception to the refusal of the court to receive in evidence the certified copy of the transcript.

The Court: No exceptions are necessary. Patent lawsuits are governed by the new rules, and no exceptions are necessary; they have not been for nine years now.

Mr. Huebner: Probably it is just a matter of habit.

The Court: You might as well skip the habit, because I will not note an exception. Patent law has not resulted in many lawsuits during the war. Maybe counsel has forgotten the rule. I will read the rule to you, because I don't like idle gestures, in my court. This is Rule 46 promulgated by the Supreme Court in 1938, and which went into effect in 1938. It was sent to the Congress in December, 1937, and then became automatically the law that year, so, you see, it is nearly ten years since it has been in effect:

"Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and if a party has no [13] opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him."

The Court: So, having asked me to rule, and I having excluded it, your exception is automatically there.

Mr. Huebner: I would like to offer in evidence the consent judgment in the case of *Gibbs v. Loof*, which is a proceeding in the District Court of the Southern District of California. I have from the clerk's office the original file, and I would like to offer in evidence from

that file the original document which is the consent judgment.

The Court: We take notice of our own decrees. It is a judgment, a three-page document, and may be received as an exhibit. It was filed August 27th, 1946, signed by Judge McCormick, and contains attached to it the consent to its entry; also approved as to form. It may be received by reference.

The Clerk: Plaintiff's Exhibit 4 in evidence.

[Note: Plaintiff's Exhibit No. 4 will be found in the Book of Exhibits at page 355.]

Mr. Huebner: I next offer, your Honor, consent judgment in the case of Gibbs vs. Hicks, et al., No. 5565W, also in this court.

The Clerk: Original judgment by consent in Case 5143 was the other offer.

The Court: The consent decree, consisting of three pages, is dated January 21, 1947, and was signed and filed on [14] that date. It may be received by reference.

The Clerk: Plaintiff's Exhibit 5 in evidence.

[Note: Plaintiff's Exhibit No. 5 will be found in the Book of Exhibits at page 358.]

Mr. Huebner: Mr. Gibbs, take the stand.

Mr. Fulwider: I presume counsel closed his opening statement. May I not make an opening statement before he goes into their case?

The Court: It is all right with me.

Mr. Fulwider: I would prefer to, so your Honor has both sides of it.

The Court: The only reason I did not stop him was because he proceeded with more than an opening statement. He has offered exhibits in evidence. I thought, under the circumstances, you could have yours later on. However, if you want to make the statement now it will be all right.

Mr. Fulwider: I think I would. As Mr. Huebner stated, we have two forms of structure that are accused here. \* \* \* [Omission of approximately nine and one-half pages of argument by Mr. Fulwider.] [15]

\* \* \* \* \*

Mr. Huebner urges a broad interpretation or a left interpretation, shall we say, to define the principle of the old form and ease himself out by infringement on the new form, and vice versa.

The Court: Of course, it is elementary—and I think I wrote in at least one opinion myself—that if the claims are broad, then the patentee is not bound by an illustrative embodiment of his invention as being the exclusive one.

Mr. Fulwider: That is true, your Honor. But I do believe that he is bound by that type of embodiment, or there must be an end to his expanding and trying to cover the entire field in our art.

To possibly expedite your consideration, we have prepared some outlines of the claims that are in issue which are a little easier to read; and I should like to either just hand these out for your use or mark them as an exhibit, whichever you prefer.

The Court: It may be used as a type of summary.

The Clerk: Shall I mark it as an exhibit, your Honor?

The Court: Yes, mark it as an exhibit.

Mr. Fulwider: Mark it as our Defendant's Exhibit A.

Mr. Huebner: Do you have a copy for us, Mr. Fulwider? [25]

Mr. Fulwider: Yes.

The Clerk: This is Defendant's A in evidence.

[Note: Defendant's Exhibit A will be found in the Book of Exhibits at page 365.]

Mr. Fulwider: I believe that is all we have at this time.

The Clerk: There is a stipulation of facts, your Honor, which counsel has presented; and there is a place for the judge's signature on there.

The Court: It is the usual stipulation that plain copies can be used.

Gentlemen, I think before you call your first witness we had better take a short recess. Then we will not break the continuity of the witnesses' testimony.

All right, the stipulation may be filed. It is the usual stipulation about using plain copies. Ten minutes.

(Short recess.)

The Court: All right.

Mr. Huebner: Your Honor, I wish to make a very brief comment on the Halliburton Oil-Well case.

The Court: Gentlemen, I am always rather generous; but I do not think we ought to argue the law at this time. We will get to the law after we get some facts in. I am familiar with that case. I am familiar with a later case than that.

The Supreme Court is in constant flux on that topic. About a week ago they handed down a decision in a case which practically overrules the *Mercoid* case so far as monopoly; [26] and they say patent is a monopoly and a man can go the limit so long as he does not force certain



measures on another man. So that all this law that we assume restricts, if you make a restrictive covenant, you cannot do it; it is done away with. Now they say that the owner of a patent can agree with a licensee; that he is to be the owner of every improvement that he makes. They say that that is monopoly all right. They say if it violates the anti-trust law, it is monopoly. You can pick one decision and say they are extending the monopoly and the other one they are tightening it up. So that is that. We will talk about that later on, gentlemen.

Mr. Huebner: You were referring, perhaps, to the Transparent-Wrap Company case?

The Court: Yes. I have read it.

Mr. Huebner: All right. We will call Mr. Gibbs.

JOHN T. GIBBS,

called as a witness by plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: John T. Gibbs.

The Clerk: G-i-b-b-s?

The Witness: Yes. [27]

Direct Examination

By Mr. Huebner:

Q. Mr. Gibbs, you are the plaintiff in this case?

A. I am.

Q. Where is your residence?

A. Sands Point, Long Island, New York.

Q. You are the patentee of the patent in suit?

A. I am.

Q. Are you at the present time the owner of that patent? A. I am.

(Testimony of John T. Gibbs)

Q. Have you ever assigned it to anyone?

A. No.

Q. You have been the owner of it continuously since it was granted until today?

A. I have.

Q. And still hold it?

A. I do.

Q. All right. Now, under the patent in suit have you caused any machines to be built and installed for use or licensed?

A. I have.

Q. Will you give a brief resume to the court of your commercial operations under the patent in suit?

A. There are approximately 1,500 units now in use. A [28] number of these units are grouped together which makes one game. I have three games in Coney Island, New York; I have one in Rockaway, New York; in Long Beach, Long Island, New York; two in Revere Beach, Boston; one in Nantucket; one in Saven Rock, Connecticut; one in Ocean Beach, Connecticut; Pallisades Park, New Jersey; Olympic Park, New Jersey; Keansburg, New Jersey; Asbury Park, New Jersey; Wildwood, New Jersey; two games in Atlantic City, New Jersey; one in Coney Island, Cincinnati; one in San Francisco; one in Long Beach, California; and there is one in Blackpoole, England.

Q. Are these machines that you have referred to constructed and operated according to the patent in suit?

A. They are constructed and operated as the original game was invented, yes.

Q. And as disclosed in the patent in suit?

A. Yes.

Q. When did you first put a game in Long Beach, California?

A. It was in December, 1930.

(Testimony of John T. Gibbs)

Q. Did you ever put a game in Santa Monica, California?     A. Yes, I have a game there.

Q. During what year or years did the game operate in Santa Monica, California?

A. In '32 and '33 and part of '34.

Q. Do you have a trade name or identification that you [29] universally use on these games?

A. Well, the trade name is "Fascination Game." Is that what you mean?

Q. That is right. Is there any exception to that in the case of Coney Island, New York?

A. Yes. It has been known as "Five-Star Final Fascination Game."

Q. And other than the Five-Star Final Fascination in Coney Island, the rest of the games have all been known as Fascination?

A. Except the one in Long Beach now. That is "Skill-A-Line."

Q. Skill-A-Line?     A. Skill-A-Line, yes.

Q. These various installations to which you have referred, were they outright sales by you of the patented machines? Or are they operated under license?

A. Before the patent was granted, there were two outright sales.

Q. Where were they?

A. In San Francisco and the one in Coney Island, Cincinnati.

Q. And since the patent was granted how have you operated?

A. By license agreements and royalties. [30]

(Testimony of John T. Gibbs)

Q. Do you receive royalties on all the other games than those which were sold outright?

A. I receive royalties on all games operating, except those two that I mentioned.

Q. Since the patent was issued have you caused the games which are licensed or manufactured by you to be marked with any sort of patent notice?

A. I have, yes.

Q. In what form was that notice?

A. A little bronze plaque. It has "Fascination" giving the number of the patent and the address at New York on it.

Q. Is this bronze ticket here the thing you are referring to?      A. Yes, it is.

Mr. Huebner: Before I offer that in evidence, I should like to make this clear:

Q. Has a notice of that type been put on every one of the patented games authorized by you or manufactured by you on and after the date of the patent grant?

A. Yes, and also a large notice, large notices on the walls of the room.

Mr. Huebner: I offer in evidence the metal ticket which the witness has identified.

The Court: All right. It may be received as Plaintiff's Exhibit 6. [31]

The Clerk: Plaintiff's Exhibit 6.

Q. By Mr. Huebner: Has your game been given any publicity in trade magazines?

A. Yes, in two magazines, one known as the "Show World," and I can't recall the other one. It has a very large circulation.

(Testimony of John T. Gibbs)

Q. Was it ever on display at any amusement men's conventions or meetings?

A. Yes. It was on display in 1931 at the Amusement Men's Association in the Stevens Hotel in Chicago.

Q. Do you know about when that was?

A. I believe 1931.

Q. Did your Santa Monica game operate again in the years 1937 and '38?

A. Yes, it did, yes

Q. During those years did it contain the patent notice of the type which is Plaintiff's Exhibit 6?

A. Yes.

Q. Do you have any knowledge of any operations which you allege to infringe at the present time other than the game operated by Mr. Faulkner, the defendant, as "Fawn"?

A. This is the only one that is operating.

Q. That you have any knowledge of?

A. That is similar that I have any knowledge of.

Q. Which you charge as being an infringement? [32]

A. Yes.

Q. Are you familiar with the old game of Bingo which was mentioned awhile ago?

A. Yes, I have played it, yes.

Q. For the purpose of the record, please state briefly what Bingo consisted of?

A. Well, Bingo consisted of a group of people competing against one another in the form of a lottery. They had cards which had a series of numbers which you completed five in a row. The game is usually played by either drawing a number out of a basket or a ball or someone passing one ball around and getting a number which all the people use. And when enough numbers have been called where one of these combinations of numbers is on



(Testimony of John T. Gibbs)

a card, five in a row—sometimes it is used four in a row; there have been old cases of that—when that is accomplished, then they are declared the winner.

It is not an individual skill group game. No one exercises any skill on it. It is usually something that is so-called drawing something from a hat.

Q. Now, Mr. Gibbs, did you bring an action against the Conalk Amusement Corporation in the Eastern District of New York, Case No. E-8377, entitled John T. Gibbs, Herman Rapps and Samuel Rodinsky v Surfeo Amusement Corp., Conalk Amusement Corporation and Fred I. Sindell?

A. Yes, I did.

Q. Did that result in a consent judgment or decree in favor of yourself as plaintiff on October 28, 1938? [33]

A. It did.

Q. Did you bring an action, John T. Gibbs and Kahn's Amusement Corporation v. Scientific Machine Corporation, Max D. Levine and Fred Hailpern, which was an action for infringement in a patent suit?

A. Yes.

Q. Did you bring an action for infringement on the patent in suit in the Eastern District of New York, Gibbs v. Scientific Machine Corporation, Civil No. 2175?

A. I did.

Q. Did that result in a consent judgment in favor of the plaintiff on January 24, 1942?

A. It did.

Q. Did you bring an action in the Eastern District of New York entitled "John T. Gibbs and Kahn's Amusement Corporation v. Stanley Gersh, Samuel Garber and Herman Taller, Civil No. 5728?"

A. I did.

(Testimony of John T. Gibbs)

Q. Did that result in a consent judgment in favor of the plaintiff holding the patent infringed on August 29, 1945? A. Yes.

Q. Did you bring an action in the District Court of Connecticut entitled John T. Gibbs v. Vincent Anderson, Civil No. 1556? A. Yes. [34]

Did that result in a consent judgment in favor of the plaintiff sustaining the patent in suit and holding infringement on April 25, 1946? [34-A] A. It did.

Q. Did you bring an action in the eastern district of New York in the matter entitled "Gibbs v. Levy" for infringement of the patent in suit? A. Yes.

Q. Did that result in a consent judgment in favor of the plaintiff, holding the patent in suit valid and infringed?

A. Yes, it did.

Mr. Fulwider: May I ask, Mr. Huebner, were these litigated or were they consent decrees?

Mr. Huebner: These were all consent decrees, Mr. Fulwider. We will have available shortly certified copies of these judgments. But it may not be necessary to encumber the record with them. If Mr. Gibbs' verbal testimony is sufficient for your purpose, we won't bother to produce and put into the record the consent judgments.

Mr. Fulwider: We are perfectly willing that that be the case.

The Court: All right.

Q. By Mr. Huebner: Have your operations, your commercial operations, under the patent in suit, Mr. Gibbs, been profitable? A. Yes.

Mr. Huebner: You may cross examine. [35]

(Testimony of John T. Gibbs)

Cross Examination

By Mr. Fulwider:

Q. What is your local address, Mr. Gibbs?

A. 5123 Laurel Grove Avenue, North Hollywood.

Q. 5123—

A. Laurel Grove Avenue, North Hollywood.

Q. Is that Los Angeles? A. North Hollywood.

Q. Now, let us see. You filed your application for the patent in suit on February 16, 1931, did you not?

A. I believe that is the date, yes.

Q. That is the date the patent shows.

The Court: That is the date of the patent.

Q. By Mr. Fulwider: All right. Mr. Gibbs, when did you conceive the game apparatus that you have disclosed and claimed in that patent?

Mr. Huebner: Your Honor, I object to that as irrelevant and immaterial at this stage of the proceedings.

The Court: This is not cross examination.

Mr. Fulwider: Then, if your Honor please, we will call him under 43-B.

The Court: Not now. We do not try these lawsuits in a lopsided manner. I know sometimes patent attorneys are used to doing that. But in this court we try them just as any other lawsuit. [36]

You cannot call him now. When it comes to present your defense and you want to elicit from him testimony that might be favorable, you may call him, but not now.

Mr. Fulwider: I thought it would expedite matters.

The Court: No. No, you have not been before me; but your father has been. I do not know of any rule of expediting business except by observing the rules of evi-

(Testimony of John T. Gibbs)

dence. Patent lawsuits are just the same, and patent lawyers have to learn the rules. Some of them never do.

Mr. Fulwider: Well, I try hard, your Honor.

The Court: So conform strictly to the rule: Opening, closing and rebuttal. Never call a witness out of order unless some scientist or some doctor appears to whom we grant special privileges.

Q. By Mr. Fulwider: I believe you testified that the first game manufactured by or for you was installed in Long Beach in December of 1930, was it? A. Yes.

Q. Who made that game?

A. It was manufactured part—part of it was manufactured by the Cannon Electric Development Company and, oh, several other parts. I can't recall. There was wood work, some cabinet shop in Long Beach. I don't believe they are in business now.

Q. The cabinets were made elsewhere? [37]

A. Yes.

Q. And Cannon made the electrical parts?

A. That is right, yes.

Q. Did they make all of the electrical parts, I mean the entire circuits?

A. Well, the unit itself is one self-contained with all the circuits and all of the wiring. It is just a matter of three connecting cords from one unit to another which is installed upon the premises.

Q. I see. How long did that game operate in Long Beach? A. I believe two years.

Q. Then what did you do with it?

A. It was taken from Long Beach at the invitation of the people of the World's Fair in Chicago in 1933. I

(Testimony of John T. Gibbs)

am quite sure that was the equipment that went back there.

Mr. Fulwider: May I ask a question, your Honor? In the direct examination this witness stated that he was the patentee and the inventor. Is it wise to inquire into his knowledge of the patent?

The Court: No. That is defense matter to be brought out. The only object of this examination is merely to show that it is not a paper patent; that it has been reduced to practice.

As a matter of fact, I came very near stopping and asking [38] if you would not stipulate that it is reduced in practice. That is all the cross examination should be.

Mr. Fulwider: On the other hand, he did go into the matter of where these games were made.

The Court: That is all right. You may cross examine as to that. As a matter of fact, he could have been asked just one question: Whether he is the man named in this patent, whether it has been reduced to practice and how many apparatuses are in existence. That would have concluded it.

Mr. Fulwider: Well, I should like at this stage of the proceedings to interrogate him at some length on the construction of those early machines.

The Court: We will get to it at that time. You have a rule under Rule 43-B. You can examine him as an adverse witness relating to any defenses you may have.



(Testimony of John T. Gibbs)

Q. By Mr. Fulwider: Referring to the games in San Francisco, Mr. Gibbs, you stated, I believe, that there was no patent notice on those games? Or was there a patent notice? I don't recall.

A. Those games were sold prior to my receiving the patent. At the time, I believe, there must have been some patent notice, "patent applied for." I haven't seen those games since. I have had no occasion to go there because they are not my property nor are they licensed by me. They were sold outright before the patent was granted. [39]

Q. Were they sold by you or by Cannon?

A. They were sold by me.

Q. Do you recall whether or not there was any kind of patent notice on them at the time they were sold?

A. The games weren't patented then. It had only been applied for at that time.

Q. Did you ever subsequently apply any patent notice to those machines after your patent issued?

A. Not that I recall. I don't think I have been there since I installed them.

Q. Did anyone else, so far as you know, ever apply a patent notice to those two machines?

A. They may have been requested to, but I haven't seen that equipment to know whether they have put the patent notice on that particular equipment at all.

Q. So far as you know, there never was a patent notice?

A. I do know that there was always a "patent applied for" on all equipment that went out. Whether that is still on, I don't know. I haven't seen the games since I installed them prior to the time that the patent was granted.

(Testimony of John T. Gibbs)

Q. You do not know whether or not they ever changed that notice to put the patent number on?

A. No, I haven't seen the equipment.

Q. At the time that you constructed or had constructed this game which you installed in Long Beach, what was your [40] business? Were you in the concession game business at that time?

A. I was interested in some equipment. It wasn't my business, though, entirely.

Q. What type of interest was that?

A. Well, I was a stockholder in a small corporation there that operated an amusement device.

Q. What sort of amusement devices did they operate?

A. They owned one game and one lease down there. I think it was called the "Grunt Derby" or something.

Q. The what? A. The "Grunt Derby."

Q. The Run Derby? A. Grunt, G-r-u-n-t.

Q. What type of game was that?

A. It was an animated object that ran up a track, and it was a race as to the first one getting up there. It was similar to another game known as the "Coney Rabbit Racer." The only thing, they supplanted pigs instead of rabbits.

Q. The Long Beach one was pigs? A. Yes.

Q. Was that a competitive game where different people had their own pigs?

A. They played an individual, that is, it was a group game, yes. [41]

Q. Was a group game?

A. A group game is one where people are in competition with each other.

(Testimony of John T. Gibbs)

Q. How did the player operate to get his pig to go up over the hill?

Mr. Huebner: This again, your Honor, I object to as not proper cross examination.

The Court: Yes, I shall sustain the objection. We are not interested in all the evolution of these various games established to allow people to amuse themselves. We have a simple lawsuit here. Let us stick to it. We are not trying all the concessionaires who have devised games to attract the unwary at Long Beach, New York, or in Long Beach Pike, California. You can get a book on the evolution of games if you want to read it.

Mr. Fulwider: Just one more question, then;

Q. Am I correct in assuming that the game of Bingo that you described is sometimes called "Tango" or "Keeno"? A. Yes, there are several names for it.

Q. You mentioned that you had granted various licenses. Were they exclusive licenses?

A. Yes, in most instances they are exclusive licenses.

Q. What did they cover, exclusive for what?

A. Exclusive for that territory in which they operated. If there was one in Long Beach, it was exclusive for that. [42] In some instances there have been two separate licenses granted to different individuals.

Q. You mentioned you had a license in Long Beach. Was that Mr. Loeff?

A. Yes.

Q. Is he an exclusive licensee for Long Beach?

Mr. Huebner: That is objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

Q. By Mr. Fulwider: Was that a written license with Mr. Loeff? A. Yes.

(Testimony of John T. Gibbs)

Q. Will you produce it here in court?

The Court: That is private business. You have abandoned your claim made before that you have a license under Looft.

Mr. Fulwider: What was that, your Honor?

The Court: Before you got into the case it was claimed by your defendant that he had a license under Looft. Therefore, it would be immaterial. You have not pleaded anything like that. You have attacked the validity of the patent and the license of this man which is private business and into which you cannot inquire.

Mr. Fulwider: That is right, your Honor. But my purpose in asking the question was to see the terms of the license to see whether or not Mr. Looft should be a proper party [43] plaintiff.

The Court: It is too late. You should have found that out by interrogatories before if you intended to do that. Mr. Faulkner was given an opportunity for four weeks to show up and produce a license, and ultimately it developed he did not have a license.

Mr. Fulwider: We are not maintaining that we have a license.

The Court: This matter was continued at your request to give you an opportunity to study the case. You cannot present new issues at the present time.

Mr. Fulwider: I was not going into that issue at all.

(Testimony of John T. Gibbs)

The Court: The license is none of your business, to be frank about it.

Mr. Fulwider: I believe that is all the cross examination of this witness.

The Court: All right.

Mr. Huebner: No redirect.

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Huebner: Mr. Wiser.

DOUGLAS WISER,

called as a witness by plaintiff, being first duly sworn, was [44] examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Douglas Wiser.

The Clerk: And the spelling of your last name?

The Witness: W-i-s-e-r.

The Clerk: W-i-s-e-r?

The Witness: Yes.

The Clerk: Thank you.

Mr. Huebner: If your Honor please, before I interrogate this witness, Mr. Fulwider has requested me to guarantee that Mr. Gibbs will be present in court. So far as I know, Mr. Gibbs will be here throughout the trial.

I should like to ask Mr. Gibbs so that I don't mislead counsel.

Mr. Gibbs: Yes.

The Court: He is a party to the action. He will have to remain in attendance during the entire course of the proceedings.



(Testimony of Douglas Wiser)

Mr. Huebner: And he will remain in attendance.

The Court: All right.

Direct Examination

By Mr. Huebner:

Q. Mr. Wiser, what is your business?

A. I manufacture amusement games. [45]

Q. Did you ever manufacture a Skill-A-Line game for installation on the Pike in Long Beach?

A. Well, it was not called "Skill-A-Line." It was called "Lite-A-Line."

Q. All right. For whom did you manufacture it?

A. Arthur Loeff.

Q. Is that the machine that was charged to infringe in the action of Gibbs against Loeff in the United States District Court for the southern district of California?

A. Yes.

Q. Where did you get the idea for that game?

A. Well, the idea was brought to our attention over in Santa Monica after looking at Mr. Gibbs' machine, the Fascination game.

Q. Did you see the Fascination game in Santa Monica about 1937 or '38? A. Yes.

Q. Was it your intention to copy that Gibbs game for your own installation on the Pike to be operated by Loeff Amusements?

A. We built a game similar to Mr. Gibbs' and operated it in Santa Monica in 1938. That game was subsequently taken to the San Francisco fair and operated on the Gay Way of the amusement area there. Later it was sold to one of the partners who we were operating it with. [46]

(Testimony of Douglas Wiser)

Q. Was that game similar to the Fascination game in Santa Monica?

Mr. Fulwider: May I object at this stage? I cannot see where any of this evidence is relevant to this particular case. We are not trying Mr. Loeff's game.

I should like to move that the last answer be stricken. And I object to this question, any examination pertaining to Mr. Loeff's game.

Mr. Huebner: May I state my reason for this, your Honor?

The Court: Yes.

Mr. Huebner: I propose to show, as we already have by Mr. Wiser, that Mr. Wiser and Mr. Loeff copied the patented game of Fascination which they saw in Santa Monica.

That issue is now over with as far as their part was concerned. But the next thing I propose to show is that Mr. Faulkner, the defendant in this case, in turn copied the infringing game on the Pike at Long Beach. So I want to trace there an intent to copy the patented machine.

Mr. Fulwider: I do not think that is proper, your Honor. There are many differences between games, and the Loeff game might infringe the patent and be entirely different from our game.

The Court: It becomes material in these cases to trace the origin of the defendant's idea. At times a man may conceive the same idea as another; and, of course, if the [47] idea is already patented, he cannot get the benefit of his creation, even though an independent creation. On the other hand, if the man has been connected with the patented article, either as an employee or in any other manner, it may be shown that the very thought did not

(Testimony of Douglas Wiser)

come to the man through inspiration but that he started out deliberately to copy. That is an element that has gone into many of these cases.

Mr. Fulwider: I know that is the rule. On the other hand, it seems to me to make evidence of this type admissible he must first show that the Hooff game and our game were the same.

The Court: He is going to do that. I am not going to allow him to try any of the other issues that were tried before any other court; but I am going to let him show, if he can, and as he intimates he can, the origin of the idea; that this defendant deliberately went out and copied an instrument which is traceable to the patent, for the reasons I have already given.

Go ahead.

Q. By Mr. Huebner: Will you very briefly explain the character, the construction and operation—I do not want details but just the highlights of the construction and operation—of the game which you built and installed on the Pike in Long Beach with the intent to copy the Gibbs Fascination game in Santa Monica. [48]

A. This game of Mr. Gibbs' called "Fascination Game" had been observed by myself and people who worked with me to build these games. And later on it was taken away from Santa Monica and there wasn't any game there of that type. So we built one called the "Lite-A-Line Game" which functioned in about the same manner as Mr. Gibbs' game.

(Testimony of Douglas Wiser)

Q. So as to avoid any objection to your concluding something, tell us how the game was played and what happened when it was played.

A. Well, of course, his game has been described as being a bank of machines where individual players competed for a win. And our game was constructed the same way. We had balls and we had 25 holes the same as he did.

Q. In a game board?

A. In a game board and an annunciator board that lighted up every time you put a ball in the hole.

Q. Each player had one ball to play with?

A. Yes.

Q. And when the ball was rolled, it would go down through a hole and return to be used over again?

A. Yes, that is correct.

Q. When it would go through a hole it would trip an electric switch and light a light on the back board?

A. That is right.

Q. In your Lite-A-Line game was there any signal to [49] indicate a winner?

A. It operated the same as Mr. Gibbs' game.

Q. Well, did it have a light? A. A light.

The Court: Of what did it consist? Filling in five holes?

The Witness: Filling in five holes in a straight line.

The Court: In a straight line. All right.

Q. By Mr. Huebner: Either vertical or horizontal or diagonal?

A. In any direction that completed an electric circuit which lighted the signal light, rang a bell, and also at the same time engaged a subsequent relay which would

(Testimony of Douglas Wiser)

disconnect all of the other machines the same as Mr. Gibbs' machine did.

Q. That is to say, on the winner being completed the lights of the non-winners would go out?

A. That is correct.

Q. Was that game, Lite-A-Line, which you have described, publicly operated on the Pike at Long Beach?

A. Yes.

Q. At what time, what years?

A. Well, I believe the Lite-A-Line games were first put in Long Beach in 1941.

Mr. Huebner: You may cross examine. [50]

#### Cross Examination

By Mr. Fulwider:

Q. Did you state, Mr. Wiser, when it was that you went over to Santa Monica to see that Gibbs' game. I don't recall.

A. I believe I saw the game there in 1937.

Q. 1937? A. Yes.

Q. Then I believe you stated that it was subsequently moved from there?

A. It was taken away and there wasn't any game there of that type.

Q. Approximately when was it removed? Do you recall?

A. I wouldn't recall the exact time.

Q. When did you start the construction of the game for Mr. Loeff?

A. Well, those games—I believe we had one constructed in 1940 that was not in use; and during the year 1941 it was put into operation in Long Beach.



(Testimony of Douglas Wiser)

Q. Did you build that game for Mr. Looff?

A. Yes. Well, not exactly for Mr. Looff. It was built for myself, that is, we built them and operated them; and by arrangement with Mr. Loof, why, we operated the game jointly under a partnership arrangement.

Q. I see. Well, then, you built that game in 1941 for yourself and then you made a deal with Mr. Looff to [51] operate at Long Beach, is that right?

A. Yes.

Q. I see. And that was in 1940? You built it in '40 and operated it in '41?

A. Yes.

Q. When you went over to Santa Monica to see the Fascination game, did you play the game?

A. Yes.

Q. Did you examine it inside, the wiring diagrams?

A. No.

Q. You did not see inside of it?

A. No.

Q. What you set out to do was to copy the method of play of that game?

A. Yes.

Q. And you did copy that method of play into a game which you built for and operated with Mr. Looff?

A. Yes.

Q. Was that game your original construction as to the circuits involved in the inside?

A. Yes.

Q. You designed all the circuits, did you?

A. Well, not myself; myself and the men that worked with me.

Q. Then you incorporated them in a cabinet. How [52] many units were there in the first bank that you installed at Long Beach?

A. 15.

Q. The games in Santa Monica—was it Santa Monica or Ocean Park?

A. Ocean Park.

(Testimony of Douglas Wiser)

Q. The games in Ocean Park, did they use a fair sized ball that was rolled manually as shown in Gibbs' game?

A. Yes.

Q. In the games which you built what type of ball did you use?

A. We used a size  $\frac{7}{8}$ ths of an inch steel ball that was propelled mechanically by the player.

Q. Was that similar to the ordinary marble games that you see around or did see some years back?

A. Very similar.

Q. You have a plunger with a spring on it and it pops a ball and goes up around? A. Yes.

Q. Was your playing board similar to the playing board of Mr. Gibbs' machine in Ocean Park?

A. Only in the respect that it had the 25 holes, numbered holes.

Q. I see.

A. That were correspondingly indicated on the [53] annunciator board.

Q. When did you first become familiar with the circuit in the Gibbs patent?

A. When I found his patent in the—let's see—when I went down to the library and looked his patent up in the records.

Q. When was that?

A. That was in February, 1946.

Q. What was the occasion of your interest in the Gibbs patent?

A. Being associated with Mr. Loeff in the operation of the Lite-A-Line games it was to my interest to investigate Mr. Gibbs' patent.

(Testimony of Douglas Wiser)

Q. That was when he sued you and Mr. Looff, was it not? A. Yes.

Q. Were you a party defendant in that action?

A. Yes.

Q. You were a party to the settlement of the action?

A. Pardon?

Q. You were a party to the settlement of the action then? A. Yes. [54]

Q. What is your interest in this action, Mr. Wiser?

A. As a witness for Mr. Huebner and Mr. Gibbs.

Q. Are you assisting them in the prosecution of this case?

Mr. Huebner: That calls for a conclusion, your Honor.

The Court: Go ahead. You may answer.

A. I would not be able to answer that fairly.

Q. By Mr. Fulwider: Are you still in partnership or associated with Mr. Looff in the operation of the Lite-A-Line game in Long Beach? A. Yes.

Q. Do you have any interest in the outcome of this litigation?

A. I don't know how to answer that question.

Q. Do you have a financial interest in the outcome of this litigation? A. No.

Q. You don't participate in any proceeds that might be awarded by way of damages?

A. No, I don't know that the license agreement goes into anything of that sort.

Q. Your license agreement is exclusively, I take it, for the City of Long Beach?

Mr. Huebner: That calls again for a conclusion.

The Court: I will sustain the objection. [55]

(Testimony of Douglas Wiser)

Mr. Huebner: We have the testimony of Mr. Gibbs, he being the licensor, and this man is the licensee, and I think it is equally proper.

The Court:- No, the only object of the inquiry is to show where any bias or interest the man has in testifying.

Q. By Mr. Fulwider: Did I understand you to say it was a partnership between you and Mr. Loeff, or a corporation?

A. Mr. Loeff is a general partner. I am one of the limited partners.

Q. Who operates the game? Do you have any active part of the management? A. No, none whatever.

Q. You are merely a limited partner?

A. That is correct.

Q. What is the name of that partnership?

A. That partnership, I think, is established under the name of Skill-Games.

Q. You do have an interest in this, that you are interested in minimizing competition in Long Beach, are you not? A. Yes.

Q. If this defendant were enjoined that would inure to the benefit of your business, I assume? A. Yes.

Mr. Fulwider: That is all. [56]

Mr. Huebner: No further questions.

If your Honor please, I have here a loose-leaf folder for the court's convenience, and in it it has a copy of the patent in suit, and a copy of the description, with the photographs and drawings, if you would like to have it.

The Court: All right.

Mr. Huebner: Mr. Faulkner, will you please take the stand?

TODD C. FAULKNER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Todd C. Faulkner.

Direct Examination

By Mr. Huebner:

Q. Mr. Faulkner, do you reside in Long Beach, California? A. Yes, sir.

Q. Are you the Todd C. Faulkner who is the defendant in this action? A. Yes, sir.

Q. By Mr. Huebner: I desire to appear, your Honor, we are examining Mr. Faulkner as an adverse witness.

The Court: Under Section 43 (b)?

Q. By Mr. Huebner: Do you operate a game called the [57] Fawn game on the Pike at Long Beach, California? A. Yes, sir.

Q. What is the address there?

A. 101 West Pike, sir.

Q. How long have you operated the electrical game known as Fawn at that address?

A. I think it was in 1944.

Mr. Fulwider: May I have the question read?

(Question read by the reporter.)

Mr. Fulwider: I object to that as assuming a fact not in evidence. There is no evidence that our game is electrical.

The Court: Whatever the game is.

Mr. Huebner: I want to distinguish it from the Penny Arcade.



(Testimony of Todd C. Faulkner)

Mr. Fulwider: You can distinguish it.

Q. By Mr. Huebner: How long have you operated any kind of games at that location, Mr. Faulkner?

A. I think it was '44, sir. I am not sure. It might have been '45. The books will show it.

Q. Did you take that concession over from a man who went into the Service? A. Yes, sir.

Q. That was about '44?

A. I think it was '44. [58]

Q. What kind of games or amusements were in that location at the time you took it over?

A. It was a drug store, sir.

Q. Did you have a penny arcade feature in it?

A. I put a penny arcade in there; yes, sir.

Q. You changed it from a drug store to a penny arcade?

A. I put the penny arcade in when I acquired the location.

Q. How long did you operate the penny arcade?

A. I don't know exactly, sir.

Q. Well, approximately how long?

The Court: I don't think that is very helpful. I think you can get down to this particular game by wording your question so it would not be called an electrical game, and so avoid the confusion. I am not interested in this man's affairs at all, except in relation to this particular instrument.

Q. By Mr. Huebner: Mr. Faulkner, when I refer in my question to an electrical game I am talking about the game that you were operating at 101 Pike at the time this lawsuit was brought. Do you understand that?

A. Yes.

(Testimony of Todd C. Faulkner)

Q. That is what I am calling an electrical game.

A. I know; you mean the Fawn game.

The Court: Let us give it the name "Fawn". That is [59] a fancy name.

Q. By Mr. Huebner: What caused you to have that Fawn game installed?

A. The penny arcade was not doing so well, and some of the people said if we would put in a game like the Fawn game we might do better. I talked to Mr. Hatherell about it. The Fawn game was born. I wish it was not now.

Q. Did the suggestion for the Fawn game come from some of your customers?

A. As I remember, it was a man that owned a restaurant—I can't recall his name, but he said he thought I would do better. I did not want to give up this location, and I wanted to put in something. I was at odds as to what to put in, sir. This man suggested it, and I thought it might be all right. I asked George Hatherell if he could build it, and he said he would try.

Q. That was Mr. George Hatherell? A. Yes.

Q. Is he present in court? A. Yes.

Q. Did you know at the time about the Loeff amusement game across the street on the Pike?

A. I know Mr. Loeff. I have been by his place. I don't think I had ever been in it.

Q. The one called Lite-A-Line? [60]

A. I don't know what it is called.

Q. You know Mr. Loeff operated a place across the street on the Pike, from your place?

A. I knew Mr. Loeff was on the Pike.

(Testimony of Todd C. Faulkner)

Q. This suggestion came to you. Did that refer to Mr. Looft's game?

A. Mr. Looft's name was mentioned several times. It is mentioned all up and down the Pike.

Q. When you talked to Mr. Hatherell did you tell him you would like to have him make up a game like the game across the Pike?

A. Do you mean when I talked to Mr. Hatherell?

Q. Yes.

A. I am mixed up. This is the first time I have—

The Court: Don't be nervous.

The Witness: I want to answer correctly.

The Court: Lean back, take a deep breath and say Ah.

The Witness: Ah.

Q. By Mr. Huebner: These people are very kindly people, on both sides, both lawyers.

A. I am very grateful.

Q. What I would like to ask you is, did you tell Mr. Hatherell that you would like him to make up for you a game like the Looft game on the Pike across the street?

A. I don't think I said it that way, sir. I asked [61] Hatherell if we could build a unit to replace the arcade, that was falling apart.

Q. Didn't you refer him to the game down the street?  
I am not trying to trap you.

A. I appreciate that.

Q. You remember, in my office some days ago, during your deposition, that you made comment of that character? I don't want to go through any formalities to try to impeach you, but I would like you to pause a moment and recall if you did not say that.

A. I don't recall just how I said it. Whatever I said there I said in good faith.

(Testimony of Todd C. Faulkner)

The Court: The question is this: Did you talk to Mr. Hatherell about the game in general, or did you have in mind a game something like the game that Looff had, or was that mentioned at all?

The Witness: We were talking of games in general.

Q. By Mr. Huebner: Didn't you also speak of the Looff game when you were talking to Mr. Hatherell about building one for you?

A. I might have mentioned Mr. Looff's name: I expect possibly I did.

Q. In some way, at least, didn't you identify that Looff game on the Pike as the one you would like him to copy? [62]

A. I wouldn't say that, sir. Mr. Hatherell and I went over all of these marble machines, which I think are all a great deal alike. A ball either falls in the holes or hits a bump that has an electrical effect.

Mr. Fulwider: We will stipulate, Mr. Huebner, if that will help you any, that they did discuss the Looff game, I think as he said in the deposition, and said they set out to build a game similar to that.

Mr. Huebner: I think that stipulation will be quite in order, because I don't want to harass Mr. Faulkner. He actually did say they set out to copy the Looff game.

The Court: All right.

Mr. Huebner: No further questions.

(Testimony of Todd C. Faulkner)

Cross Examination

By Mr. Fulwider:

Q. One question, Mr. Faulkner. The Looff game is on the other side of the street from your 101 West Pike, is it?

A. It is about, I imagine, sir, about three or four blocks.

Q. It is not directly across the street?

A. No, sir; it is quite a ways down. It is down the street, and there are two other company owners, before you get to his building.

Q. It is down the Pike from your place?

A. Yes. [63]

Q. On the other side of the street?

A. No, sir; it is not across the street. It is down the Pike.

Mr. Fulwider: I think that is all.

GEORGE A. HATHERELL.

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: George A. Hatherell.

Direct Examination

By Mr. Huebner:

Q. Where do you reside, Mr. Hatherell?

A. Roscoe.

Q. California? A. That's right.

Q. What is your business?

A. I am a research chemist.



(Testimony of George A. Hatherell)

Q. Under what name?

A. Manager of Dare Products.

Q. Do you have any familiarity with electricity?

A. Yes. I play with electricity quite a bit.

Q. Your interest in electricity is that an avocation rather than a vocation? A. That's right. [64]

Q. A radio ham, so to speak? A. Yes.

Q. By Mr. Huebner: I would like it to appear, your Honor, we are calling Mr. Hatherell as an adverse witness under rule 43, he being a defendant in an action in this court, Gibbs vs. Hatherell, where he is charged with infringement of the same patent in suit.

Mr. Fulwider: I don't believe that comes under Section 43 (b), your Honor, so far as this case goes. He is not adverse, at least it is not shown that he is adverse.

The Court: That section is limited, and applied only to certain persons,—an adverse party, or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party. It means an adverse party in the lawsuit before the court. I know his name has appeared here. He has written certain affidavits, but I don't think he is a party defendant, and could be called as an adverse party. I don't think you can call him under that. That is a departure from the ordinary rule. Of course, we have had the rule in California for many years before we had it in the Federal Court, in the same Section 2055 of the Code of Civil Procedure, but, just because it is a departure from the common law rule, which presumes when you call a person as a witness you vouch for him, you have to apply strictly only to those situations [65] covered by the statute. I don't think you can call him as an adverse party.

(Testimony of George A. Hatherell)

Mr. Huebner: We will ask you to step down then.

The Witness: Is that all?

The Court: That is all.

Mr. Huebner: Mr. Fulwider, do you care to stipulate that Mr. Hatherell, who was called as a witness, but was not asked any questions about it, under contract with the defendant Mr. Faulkner caused some alterations to be made in the Fawn games as they were originally installed, and that the alterations resulted in a so-called modified game which is asserted in your counter claim, connected with the answer, to be the subject for declaratory judgment in this case?

Mr. Fulwider: I am willing to stipulate, subject to the interpretation of the words "modified" and "alterations." Our position is it is a new game. I am willing to stipulate that Mr. Hatherell made changes, such as they are, whether they be alterations or reconstruction.

Mr. Huebner: May we include in the stipulation the approximate date of the alterations? You know that better than I do.

The Court: That appears in the affidavit of January 7, which Mr. Hatherell filed.

Mr. Fulwider: I believe it was November 1st, 1946.

The Court: In the preliminary injunction, the order was signed the same day as the findings of fact, November [66] 12th, 1946. There was an affidavit of mailing of a copy of this order, dated the same day, by Mr. Gerald Desmond.

BRYAN R. BURKE.

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Bryan R. Burke.

Direct Examination

By Mr. Huebner:

Q. Where do you reside, Mr. Burke?

A. 5457 Brandna Drive, Los Angeles.

Q. What is your business or occupation?

A. I am an electrical engineer.

Q. I am going to ask you one general question, to save time. Will you give your academic and practical experience as an electrical engineer?

A. I went to the University of Colorado, getting a Bachelor's degree in electrical engineering. I pursued it further, and got a Master's degree in physics and mathematics.

Then I worked for the General Electric Company for several years. That was in the East. I came back west and worked for numerous companies. In recent years I have been working for airplane companies, Vulte and Douglas, and in the electrical group, and then for the past year or so I have been working for Pacific Electro Products Company. [67]

Q. Well, that company manufactures game devices?

A. That is correct.

Q. You are familiar in general, then, with the electrical and mechanical features of game devices?

A. Yes.

(Testimony of Bryan R. Burke)

Q. Have you read and are you familiar with the Gibbs patent in suits? A. Yes.

Q. Have you examined the Fawn game on the Pike at Long Beach, California?

A. Yes. I saw it sometime ago in a cursory manner. Then last Friday I went down and examined the wiring and the details.

Q. When did you first see it in a cursory manner?

A. I don't remember exactly. It was probably four or five months ago.

Q. Let me ask you this: Did you examine it enough on the day you were there in a cursory manner and comparing it with its condition on your more recent visit to know whether there had been any changes made in the game?

A. It didn't seem to me there were any surface changes made. There could have been changes underneath. The first time I was there I didn't examine it underneath at all.

Q. Well, now, will you approximately fix the date of the recent visit when you made a detailed examination? [68]

A. That was last Friday in the afternoon.

Q. Who was present? A. Well, there was—

Q. I can hasten this, perhaps. I was present?

A. Yes, you were present.

Q. Mr. Herzig was present?

A. Mr. Herzig, Mr.—

Q. Mr. Mattingly was there?

A. Mr. Mattingly.

Q. Mr. Faulkner was there?

A. I think he was there. I was not introduced to him, but I think he was there.

(Testimony of Bryan R. Burke)

Q. Mr. Hatherell was there? A. Yes.

Q. All right. And at that time we had the opportunity, including yourself, of going behind the game and examining the wiring circuits and the details, is that correct? A. That is correct.

Q. Did you understand those circuits and how the game operated? A. Yes.

Q. Did you engage in conversation with Mr. Mattingly and Mr. Hatherell to ascertain their views as to what the changes consisted of from the game as originally made? A. That is right. [69]

Q. Did you understand from their discussion with you what the game was as originally installed there?

A. That is correct. There was wiring in evidence there, and I asked them what change had been made over the original game and they told me.

Q. Do you think from your review of the Gibbs patent in suit and your inspection and interrogations of Mr. Mattingly and Mr. Hatherell and your detailed examination of the Fawn game that you can make a comparison with the patent of the Fawn game as it was said to be originally and as it is now altered? A. Yes.

Q. I would like you to do so.

It is now 12:00 o'clock. Do you want us to stop now?

The Court: Oh, no. Let us go on for a little while.

The Witness: Would you state that again?

The Court: Give a comparison of the two methods of operation of the patented article and the other device, the original one.



(Testimony of Bryan R. Burke)

The Witness: I have never seen one of the Fascination games; but I had the patent, is all I have to go on. I studied the patent and tried to get the crux of the patent; and it seems to me like it is this:

They have adapted the old Bingo principle into a more recent and modern presentation by using electric lights of [70] different colors, with this exception; that in the old Bingo game it was a matter of chance or lot as to who won. In this patent the player has some control; at least he has something to do as an individual in who wins. Then to go into detail farther, there are several things about it that seem to me to make the patent have individual characteristics different than others that I have read or different than other machines, and that is this:

There is the whole idea of getting five combinations to get a win, five combinations in vertical or horizontal lines or diagonal lines. That is one thing.

Another thing is that it seems to be distinctive in the patent that they use one ball, one object, which is laid on board and which goes through a hole and returns to the player which is different than a lot of other games. As it goes through the hole it strikes a paddle or a switch or at least a member that causes these combinations to occur and also causes the lights to light up on the annunciator panel on the back.

It also has another feature in there that seems to me to be distinctive, is that when a winning combination is obtained in any one of the units of the game, the source of power for the lights is switched from one circuit over to another circuit. That seems to me to be the crux of the game. [71]

(Testimony of Bryan R. Burke)

Now, in examining the Fawn game I find all of those conditions to be present. They have the panel on the back with the arrangement of lights very similar to the Bingo card. These lights are operated by a ball falling through a hole and the ball returning down back to the player; and when it falls through the hole the corresponding light on the board is lit, also setting up part of a combination so that later it will determine the win.

Mr. Fulwider: I don't want to interrupt, but which Fawn game are you speaking of now? We have the old one and the new one.

The Witness: I am speaking of the old game.

Mr. Fulwider: The old game?

The Court: The way it was described to you?

The Witness: Yes, the way it was described to me and the way I saw it operating, although I didn't examine the circuit originally.

The Court: All right.

Q. By Mr. Huebner: You did examine the diagram of the so-called original circuit which is on the statement on file, did you?

A. Yes, I examined the <sup>2</sup>diagram of the original circuit as Mr. Hatherell had laid out and explained to me the way it worked before the so-called changes were made.

Q. Now, you may proceed. [72]

A. As I say, the Fawn game, the original Fawn game, seems to have the basic ideas there, that is, the application of the old Bingo principle which, as I gather from your Honor, that is old. And into that game in a new and appropriate manner to give the appeal to the public he has the 25-light arrangement, colored in a certain manner that when a winner is obtained you get a row of these

(Testimony of Bryan R. Burke)

lights lit up—that is the same in the old Fawn game as it is in the patent—and then looking at the playing field you have the one ball that is propelled by the player over the field. It drops through the holes and returns back to the player.

You have a paddle in the hole that the ball strikes on its way through which does two things. It sets up a part of the winning combination so that when you get five of these parts together, you will get a winning combination. It also lights one of the lights on the back panel. Furthermore, when a winning combination is obtained, the source of power is switched from the original source over to another source, such that when the game is shut down the original source will be killed and the second source will remain energized, keeping the winning lights lit and allowing the non-winners to go out.

Do you want me to say anything about the modified game?

The Court: Yes, go ahead. Have you concluded the similarities that you see between the old game and the patent? [73]

The Witness: That seems to me like more than similarity. It seemed to me like to be almost exactly the same.

The Court: I see.

The Witness: There are some other parts in the game that I could go into that are not exactly similar but are similar. If you want me to go into those—so far I haven't mentioned the means of setting up these combinations.

Now, as I see it, in the patent in several of the claims it covers different ways of doing that. One way is by using relays and another way is a method of armatures, annunciators, which is not too clearly defined; but if given

(Testimony of Bryan R. Burke)

the problem to construct a game of that nature, a designer would have his general principles to fall back on to. In other words, if I was given a problem to obtain a certain result, I would go through my old repertoire of training and learning that I have had to produce that result; and I wouldn't necessarily call it an invention because we do it every day in our design work. Therefore, one designer would not come out with exactly the same design as another one. But the idea of what he has to accomplish would necessarily fall into a certain classification that the designer would have at his fingertips. He wouldn't have to invent anything or bring about anything new.

In this case he would have either a mechanical method or an electrical method to fall back on because we have these [74] two sources of power available.

Q. By Mr. Huebner: Given what we call sometimes the inventive concept, which is generally disclosed in the Gibbs patent? A. Yes.

Mr. Fulwider: I object to that question. Pardon me, Mr. Huebner.

The Court: All right, that is argument. It is not a question. Go ahead.

Q. By Mr. Huebner: I should like to direct your attention to a large photostatic drawing identified as "Fig. 9" which is on the board here.

Do you know anything about the origin of that drawing? A. Yes.

Q. Where did it come from or who made it and under whose direction?

A. The original drawing from which that was derived was in the—I don't know what you would call it. Mr. Hatherell made the original drawing or had one.

(Testimony of Bryan R. Burke)

Q. The original drawing from which this was made is a blue-line print which accompanied statement or description of the Fawn machine as is now in evidence?

A. That is correct. The black lines there and the lines that are covered by red—

Q. Were all in the original? [75]

A. Were all in the original drawing.

Q. Original diagram?

Mr. Fulwider: In the original diagram you used with your motion papers for the temporary injunction?

Mr. Huebner: That is right.

Mr. Fulwider: That is merely an enlargement of that.

Mr. Huebner: That is correct, that is merely an enlargement of that. The green lines, however, as the witnesses will point out—and I don't want to mislead you—have been added by us for identification purposes.

The Court: I think you had better identify that diagram and give it a number.

Mr. Huebner: I should like to offer it in evidence now.

The Court: All right. You may do that so we will know what the witness is testifying about.

The Clerk: Plaintiff's Exhibit 7 in evidence.

[Note: Plaintiff's Exhibit No. 7 will be found in the Book of Exhibits at page 361.]

The Court: This is a good stopping point. All right, 2:00 o'clock.

(Whereupon, at 12:00 p. m. an adjournment was taken until 2:00 p. m. of the same day, Wednesday, February 19, 1947.) [76]



Los Angeles, California, Wednesday, February 19,  
1947, 2:00 P. M.

The Court: All right, gentlemen.

Mr. Huebner: Mr. Burke.

BRYAN R. BURKE (Recalled)

Direct Examination (Resumed)

By Mr. Huebner:

Q. Now, Mr. Burke, let us go back for a moment and refer to the enlarged drawing reproduced from the patent. And before I ask you a question, I will offer in evidence the enlargements of the patent drawings which appear on the easel.

What is the exhibit number?

The Clerk: 8.

Mr. Huebner: I suggest that the sheets containing Fig. 1 be Fig. 8-A, the sheet containing—

Mr. Herzig: 7.

The Clerk: No. 7 is the diagram which is already on there.

The Court: What did you say?

The Clerk: Exhibit 7 is the diagram that is already on there. It is labeled "Fig. 9."

Mr. Huebner: All right. That is on this roll, but it is in as a separate exhibit? [77]

The Clerk: That is right.

Mr. Huebner: It is not part of the patent.

Now, 8-A will be Fig. 1 of the patent. That is the sheet containing Fig. 1. 8-B would be the sheet containing Fig. 6 of the patent. 8-C would be the sheet containing Fig. 7, and so forth of the patent; and 8-D would be the sheet containing Fig. 10 of the patent in suit.

(Testimony of Bryan R. Burke)

The Clerk: Are these admitted in evidence, your Honor?

The Court: Yes.

Q. By Mr. Huebner: Now, referring either to the patent itself or, for convenience, to these enlargements, of the drawings, Mr. Burke, will you please explain to the court in some detail the physical nature of the patented game and proceed from there into the electrical features of the game? Stand back slightly, if you will, so that the judge can see you, if you please.

A. In this area here on this diagram are shown the annunciator lights, there being 25 of them in a peculiar arrangement, and one at the top.

On those photographs, in one of those sets of papers, it shows—

Q. By "photographs" you mean of the defendant's Fawn game?

A. Yes, the Fawn game. If I had those, I could point out what corresponds in the same manner to this portion of [78] the patent.

Mr. Huebner: Do you have that exhibit, Mr. Clark? It is a description, I think. You removed it from the file. Thank you.

Q. By Mr. Huebner: You are referring to Plaintiff's Exhibit No. 2, the photographs included in that exhibit?

A. That is right.

Mr. Huebner: In the book, your Honor, which we handed to you for convenience there is a duplicate set of those photographs.

The Court: All right.

The Witness: Well, in Fig. 1 it shows them in bank of which there is a number of them. They are marked

(Testimony of Bryan R. Burke)

"34," I believe it is. Maybe that "34" is one particular light.

Let's see. Well, in Fig. 2 they are shown as "21." These lights—

The Court: "21"?

The Witness: —on this board, yes.

The Court: And those are the annunciator lights?

The Witness: That is correct, the annunciator lights. On the top there is a light marked "L" in the patent which corresponds to "22" of Fig. 2.

Now, so much for the annunciator panel.

Coming down to the playing field, this portion in here, there are 25 holes on the playing field that have a paddle, [79] a member sticking out in them; and on the Fig. 2 of the photographs you can also see the 25 holes. The paddles are not clear in that picture.

Well, on Fig. 5 the panels that are underneath those holes were shown and numbered "52."

Now, in this blow-up on the patent drawing—

Q. By Mr. Huebner: When you say "this" would you refer to the figure so the record will show what you are talking about?

A. In Fig. 2 of the patent drawing at the lower left-hand corner here is a blow-up showing the paddle protruding out into the hole in the playing field, such as that when the ball passes through it will engage with this paddle and set up subsequent operations.

Now, may I have this next one turned over so that I can get into the electrical circuit?

(Testimony of Bryan R. Burke)

Q. Would you refer, while you are on that point, to a similar paddle or switch in the defendant's Fawn game and identify it?

A. It is hard to see in the photographs through the hole. There is no view showing it directly through the hole; but the paddle that corresponds to it is No. 52 in the photograph Fig. 5. [80]

One point we might bring out in this field is that there is only one ball, and that is played into the field and returned back to the player.

Q. Will you proceed? You were referring to the fact that there was just the ball used?

A. Yes, in this illustration, Figure 2 of the patent, it shows there that there is a ball that was played onto the field, and returned to the player.

Q. It returns down underneath the visible part of the playing board?

A. That is correct, it goes through holes, and comes out underneath the board illustrated here.

Q. Is the same thing present or not present in the defendant's Fawn game?

A. Yes, the photograph, Figure 2, illustrates that there is a single ball, marked 27, that is played into the field, goes through these holes that are marked 30 and 32, falls onto a lower panel, and returns back down to the position shown.

Q. When the ball in either the patented game, or defendant's Fawn game, drops through the hole it actuates

(Testimony of Bryan R. Burke)

a switch which acts to close on the light on the annunciator, is that correct?

A. That is right. Each one of these holes, when the ball falls in, sets up an action, and lights the light, and [81] it corresponds on the annunciator panel.

Q. In the Gibbs patent, is there a series of these units, or playing boards, associated side by side?

A. Yes. It is not shown on this illustration of the patent, but it mentions there are a number of units put side by side to make the game unit.

Q. Is the same thing true of the Fawn game?

A. That is true.

Q. Are the side by side units of the Gibbs patent connected electrically? A. Yes.

Q. Are the side by side units of the Fawn game connected electrically? A. That is true.

Q. What is the purpose of having a plurality or series of units forming what we have referred to as a bank connected electrically?

A. I don't follow you exactly.

Q. Here is the point: Are these units, the players of each one of these units competing one against another, or playing individual games by themselves?

A. They are competing, one with another, each individual trying to get a winning combination on the board before the game is shut down.

Q. Will you refer to another sheet of the Gibbs [82] patent drawings, and go into the electrical action that takes place when the ball goes through one of the holes



(Testimony of Bryan R. Burke)

onto a switch or paddle? The witness is now referring to 8-B.

A. This drawing is rather complex, and I want to point out one or two things in it.

This switch marked S, in every case is operated by the paddle by the hole on the playing field. When the ball falls through one of these holes that operates this switch, and turns on this light, marked successively 1, 2, 3, 4, 5, up to 25.

Q. There is one switch for each hole on the playing board?

A. That is correct. Then under each unit there are some relays, shown on the lower portion of this same drawing; what we might call feed relays, and these feed relays are shown in the Fawn game in Figure 4 of the photograph, relay 98.

The Court: What function did you say these perform?

The Witness: I have not gone into that yet. I will go into that.

What these feed relays do is, when the game begins, they feed the power in through one circuit into the various units in one position. Then, after a winning combination is obtained on this board,—that is, that I mean you get five of these lights lit up in a row, these feed relays are [83] operated in such manner as to shift the power feed in from one circuit over to another circuit. Then subsequently when the game is shut down, the original circuit is killed; the electricity is cut off of it in such a way that all of the units which do not have the winning combination,—the lights go out, and only the unit or units, as the case may be, that have the winning combination on them will the lights remain lit.

(Testimony of Bryan R. Burke)

In comparison with the patent and the Fawn game, they have a switch on the Fawn game which compares to this switch; they have these lights which appear on the annunciator panel, and they have the feed relay with several connections on it. They change the power from an original feed circuit over to another feed circuit, the same as shown in the patent. So that after the game is shut down only the unit or units having winning combinations on will remain lighted, and the rest of them will go out.

Q. Incidentally, will you refer to the wiring diagram, which is a part of the description of the Fawn game in evidence, and identify, if you can, similar parts of that document.

A. You are referring to Figure 9?

Q. Yes. Figure 9, part of the description, which is Plaintiff's Exhibit 2.

A. Yes. The figure shows No. 58, as being the [84] switch that is operated by the member protruding in the hole, so when the ball falls through it it strikes the member, and closes the switch. This—

Q. This wiring diagram?

A. This wiring diagram.

Q. Figure 9?

A. Yes. That feeds into a circuit on the annunciator panel, shown directly above 58. I believe they marked the annunciator panel 51 also in the wiring diagram.

Q. Where, in Figure 9 of this diagram, is the relay which you say corresponds to the feed relay you referred to in the Gibbs patent?

A. That is marked with various numbers in general. I think the letter S points to where the relay has a solenoid 98, a switch blade 109, and switch blade 84.

(Testimony of Bryan R. Burke)

Q. What part does that correspond to in the patent? By that I mean, will you indicate by reference there on Figure 6 of the patent what relay you are referring to?

A. Here again there are a lot of numbers, but I think R-2, and R-3 of the patent drawing, Figure 6, correspond to relay S in Figure 9 of the drawing.

Q. Assuming that in the patent, and in the Fawn game both balls have been through the holes in the playing board, which you suggest set up the winning combination, which are the lights on the annunciator, what happens? [85]

A. There is one more point I might bring out. In both the patented game and the Fawn game, after the ball goes through the hole which necessarily makes only a momentary contact with this paddle that protrudes out in the hole,—if it had a plain switch on it it would merely make the light lit when the ball is striking—when the ball is passing through. In both the patent and the Fawn game there are means for keeping these lights lit after the ball falls through and returns to the player.

Q. So each successive light lighted stays on until the game is concluded? A. Yes.

Q. What are the means of the patent, and the corresponding means of the Fawn game?

A. In one of the claims of the patent they are relays as shown in this drawing. In other of the claims of the patent it does not specify the particular relays.

Q. Forget for a moment what is in certain claims, and what is in others, and confining it to the disclosures in the description and drawings of the illustration of the

(Testimony of Bryan R. Burke)

body of the patent, what is in the patent to do that, and explain what is in the Fawn game to do the same thing?

A. In the patent, when the switch is closed the ball falls through the hole and strikes a paddle, and the relay indicated by R is closed, and when it closes it has a holding [86] circuit on the relay that keeps the relay closed, even after the switch is opened, even after the ball falls through the hole. In the Fawn game—

Mr. Fulwider: May I ask a question, Mr. Huebner? Is all this testimony directed to the first Fawn games or the second one?

Mr. Huebner: It is directed to both, where it fits. I would like to have an opportunity to make a distinction, if I can, between the so-called original and altered or modified game, but we are talking about the Fawn game, whether it is the first or second one, wherever it fits the testimony.

A. In Figure 6 of the photograph is shown the switches marked 58, the same as they are on the working diagram. Now, I have had it explained to me by Mr. Hatherell that these switches are held closed by the weight of the bar, possibly by the friction of the blades against the bar or paddle.

Q. You actually saw them operate?

A. That is right.

Q. Is it your conclusion that they did operate as described to you?

A. I think so. The paddle was longer on that end than the other end, so if it is pushed down it would hold down by its weight. [87]

Q. In that manner, then, in the Fawn game the switches of each lever which has been depressed are kept

(Testimony of Bryan R. Burke)

closed until the game is concluded and something is done to re-establish the switches at open position?

A. That is correct.

Q. All right. Now, did you finish that part of your comparison?

A. Yes, I think that finishes that part.

Now, in addition to lighting the light on the annunciator panel in the back which gives a visual indication to the player, there is also another action started every time a ball goes down one of these holes. That action is starting to set up a part of a combination by which in this particular drawing here or on the Fawn game there are 12 of these combinations as represented by the five rows, the five columns and the two diagonals.

Every time a ball goes through a hole—let us take for example this one here in addition to that—

Q. When you say “this one here” will you indicate also verbally which one you are pointing to, the upper left-hand corner of the drawing, for example?

A. Yes. We can take this upper left-hand relay, the first one indicated here. The indicator light on it is marked “1”.

In addition to lighting that light certain [88] circuits are closed by the same relay that holds this light lit which are a part, a beginning, if you want to state it in that way, of a combination.

In this particular one in the corner it would be the beginning of a combination of the five in that row, the five in this column, and the five in this diagonal.

Now, subsequently as the ball is again passed over the board and goes down other holes, it will operate other portions of the circuit and add more parts to this com-



(Testimony of Bryan R. Burke)

bination; as, for example, if the ball went down the No. 2 hole this relay would be operated, making another step in the combination of five in the first row.

It would also start out a step in the combination, first step in the combination of the second row.

Q. In order to shorten this somewhat, let us arbitrarily from here on assume that a winning combination has been established in the upper row which is lights 1, 2, 3, 4, and 5.

A. All right. I can show that on the next drawing better. I think it is the next one.

The Clerk: Is this 8-C?

Mr. Huebner: Yes. The witness is now referring to Exhibit 8-C, which is Figures 7, 8 and 9 of the Gibbs patent.

The Witness: Well, on Figure 7 of the Gibbs patent it shows what you were asking about. If you have completed a [89] row, the first row across the top of any relays, 1, 2, 3, 4, and 5, they would have operated setting up a winning combination, completing a circuit that runs down to the feeder relay, pulls the feed line from the—pulls it, yes—the feed line from the original over to the subsequent one such that when the game is shut down and the original feed line is killed the subsequent one will hold on this unit that has a winning combination; whereas, all of the other units that do not have a winning combination go out.

Q. So in setting up a winning row that way, it effects the substitution of a different live circuit to hold the lights on than was originally employed; is that right?

A. That is right.

(Testimony of Bryan R. Burke)

Q. Very well. Is there a similar electrical or mechanical combination, electrical-mechanical combination in the Fawn game?

A. Now, in the Fawn game the combinations are done by a mechanical means rather than by the row of armatures on a relay.

As each paddle is pushed down by the ball going through the hole an obstruction is moved away from a series of bars, of which there are 12, one corresponding to each one of the 12 combinations. After five of the pins are removed from a bar on which there are only five holding it, the bar will move over; and as it moves over it operates mercury [90] switch "M" in Figure 9 of the drawing of the original Fawn game which then in turn operates, completes the circuit and operates the feeder relay, which, as I have stated before, exactly as it does in this case, shifts the power from the original circuit over to an additional circuit, and so on.

Q. So that in the Fawn game the actuation of this mercury switch "M" by means of a bar moving effects a substitution of one circuit for another in order to hold the winning combination on this; is that right?

A. That is correct. In other words, the Fawn game has some mechanical parts in addition to the electrical parts.

Q. Assume that the winning combination has been effected, that is for example, the upper row, 1, 2, 3, 4, and 5 of the Gibbs patent, what takes place to cut off the non-winners from further electrical energy?

A. I didn't quite get the first part of your statement there. What takes place in the Gibbs patent or in the Fawn patent?

(Testimony of Bryan R. Burke)

Q. Well, first the Gibbs patent. If you need another figure, we will turn to it.

A. I will need another figure here.

Q. Which is better for your purpose? Figures 7, 8 or 9, or Figure 10?

A. Well, this one on the side. [91]

Q. We will turn it the way you want it if that is the figure you want.

A. Turn it around then and maybe I can see it better.

Q. Now, let us stick this on tightly there so it will hold up.

The Clerk: Is this Exhibit 8-D?

Mr. Huebner: It is, to which the witness is now referring.

The Witness: Now, in Figure 10 of the patent is shown the relay that I have referred to before as a feeder relay on each—feeder relays on each of the units. There are three of them shown here, three units.

Now, the feeder relay, as we brought out before, corresponds to relay "S" in Figure 9 of the Fawn game. We have here one portion in which there is a closed circuit.

Q. When you say "here" will you identify the spot on the drawing to which you pointed?

A. Well, that closed circuit is closed between contacts "82" and "77".

On the Fawn game that corresponds to the circuit as shown closed and marked "84" on Figure 9 of the diagram of the Fawn game.

There are also some contacts shown here, "119," "122" and "121."

(Testimony of Bryan R. Burke)

What they do is when you get a winning combination on the board, these contacts come closed, the ones I [92] referred to before, "82" and "87" come open.

In a similar manner as in the Fawn game wiring diagram, "84" shifts over to "84-prime" and "109" closes.

Well, what that does is to shift the power feed in from the original circuit over to the later circuit. It also rings the bell, lights the light on the top of the panel and operates the circuits in such a way as to cut the power off of the original circuit and leave it on the second circuit as shown in the Figure 9 on the Fawn game.

The original power is fed through line "77"; after winning combination is obtained, the power is fed through—wait a minute. I am wrong on this. Not "77". It is "78".

(Continuing)—fed through "78" and after the winning combination is obtained on the board it is fed through "78-prime" as the switch on the relay changes over from "84" to "84-prime."

It also closes the circuit "109" which operates the relay, as indicated by "106" and "112" to in turn operate relay "11" which operates the circuit on the original circuit and shuts down all of the other units, excepting the ones that have a winning combination.

Q. Well, as an electrical man, Mr. Burke, would you say that the circuits that you have described perform these several functions in the Gibbs patent and the circuits used to perform the same functions or similar functions in the [93] Fawn game are substantially the same?

A. Yes, practically identical.

(Testimony of Bryan R. Burke)

Q. . Now, let us talk about—

The Court: Gentlemen, one of the judges desires to see me. I shall have to declare a short recess.

(Brief recess.) [94]

Mr. Huebner: Before proceeding, I would like to show the witness and then offer in evidence a photostat of a drawing.

Q. The drawing or photostat I have just shown you, Mr. Burke, was prepared in my office under your direction, was it not? A. That is correct.

Q. For the purpose of illustrating the Fawn game as originally wired up, and also illustrating in slightly more detail, in broken lines on the left-hand side of the drawing, some of the changes in features in the altered game?

A. That is correct.

Q. I meant to say comparatively slightly more detail than is shown in the large drawing, Exhibit 7, is that correct? A. That is correct.

Mr. Huebner: I offer in evidence the photostat just identified by the witness. I have handed a copy, and I have a copy punched for the court's personal use.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 9.

[Note: Plaintiff's Exhibit No. 9 will be found in the Book of Exhibits at page 363.]

Q. By Mr. Huebner: Now, Mr. Burke, let us refer for a moment to the Fawn altered game as you saw it being operated in Long Beach quite recently. First of all, are the game boards arrangement of holes, plunger, single



(Testimony of Bryan R. Burke)

plain [95] ball, annunciator, and annunciator lights exactly the same as they were in the original game?

A. Yes.

Q. No physical change at all?

A. No physical change, no.

Q. Did you observe whether or not the signal lamps at the top of each unit were present?

A. No, the bulbs had been unscrewed in the signal lamp.

Q. Were there extra bulbs in the vicinity of the game, or in the game, which would operate on these signal lamps circuits?

A. Yes.

Q. Did you make any demonstration while you were there to see whether the signal wiring was still intact?

A. Yes, the signal wiring was still intact.

Q. What did you do to find that out?

A. We put a bulb into the circuit that brought in the winning combination and one of the units, and the bulb lighted.

Q. The same as it was intended to originally?

A. That is correct.

Q. Did you examine and compare the working of the altered wiring of the original game as it had been explained to you? [96]

A. I did.

Q. By reference to what is on these diagrams, which is necessary, the large or the small one, would you explain to the court what changes were made in the wiring of the altered game, or the original game?

A. Without using a diagram I can state that there were seven additional wires, all of them running to a timer, and one wire that was changed.

(Testimony of Bryan R. Burke)

Q. The timer itself required the seven additional wires as long as it was being used, is that correct?

A. That is correct.

Q. And only one wire in the whole system had to be changed? A. That is correct.

Q. I think you had better point out on the diagram where that wire was.

A. As I remember, it was No. 300 on the diagram. We can verify that. I think it is on the big diagram, as well as on the little one.

Q. Let us look at the big diagram, as well as the little one. By the big one you mean Exhibit 7, and by the little one you mean Exhibit 9?

A. That is right.

The Court: I don't see 300 on Exhibit 9.

Mr. Huebner: The court commented that he did not see [97] 300 on Exhibit 9. You are referring there to the numeral in green ink on Exhibit 7?

A. Yes. Well, as indicated on this Exhibit 7, No. 300 is the only wire that has been changed, and what was done with it was to change it from what I have indicated on this drawing as the red circuit, over to the green circuit, which is part of the timer circuit.

Q. Is current still supplied to the red lines of that circuit?

A. Yes, current is still supplied to the red lines of that circuit. As I mentioned a while ago, these two lines here, marked 119, 118, and covered by red, are still intact, that run to the signal light.

Q. You screwed in a light and it worked?

A. That's right. These lines indicated by 109, 108, 77-prime, 106, and 105, are still intact. Also 114-prime.

(Testimony of Bryan R. Burke)

Q. They are intact, with current in them?

A. Current is in there. They operate when the winning combination is obtained in a unit.

Q. What, if anything, additional did he put on here? You spoke of a timer.

A. There was the timer, and which there are wires to bring in 110 volts and 18 volts to operate relays in the timer, and wires control the solenoid 111, and wires to operate an additional mercury switch that they placed on the [98] control handle of the game.

Q. What, if anything, would the defendant have to do to restore the game to its exact original condition of structure and operation?

A. To restore it to operation all he would have to do would be to replace 300 back onto the red circuit; take it off the green circuit, and screw in the signal lights at the top of the enunciator panel; to bring the structure back exactly like it was he would have to remove everything shown in green.

Q. If he did not remove what is shown in green would it still work as it originally worked, by changing one connection?

A. Yes.

Q. In the Fawn apparatus, is there any way that that could be done in a few minutes?

A. Yes, it would probably take ten or fifteen minutes at the most.

Q. You observed the operation of this altered Fawn game, I take it?

A. Yes.

Q. I will ask you to describe whether anything happened upon completion of the winning combination to indicate to you, or to anyone else present, that a winning combination had been effected in the absence of the

(Testimony of Bryan R. Burke)

particular globe which carried the signal light, when this globe is [99] removed?

A. When the winning combination comes up on one unit, the relay blades move from one circuit over to another, and pass through space. When they pass through space there is no current fed to the enunciator panel. Therefore the lights flicker a slight instant, instant, noticeable to the eye.

Q. Is there an audible sound?

A. Yes, the relays make an audible sound which can be heard by the player. Also, the relay down in the box, I doubt if it could be heard by any of the players, except the one above it.

Q. The first relay you spoke of jumping across a gap, and making a sound, is that distinguishable in this present form, from other operating sounds of the machine?

A. Yes.

Q. Is the flicker of the lights in the winning combination, when that relay changes its contacts different from any of the other physical phenomena or appearance of the machine during operation?

A. Yes, during the operation of the machine up until you get the winning combination, these lights stay on without flicker. After the winning combination is obtained they go off momentarily, and then come back on again.

Q. In the altered form of the game do the non-winners go off, and the winning combination or unit remain on? [100]

A. That is correct; the same as it did in the original game. The non-winners' lights go out. The units that have the winning combination, their lights remain lit.

(Testimony of Bryan R. Burke)

Q. Does the altered game operate to cut off the non-winners while keeping the winning unit on in the same way the original game did?

A. In the same way, in exactly the same manner.

Q. What is the timer for, for delaying the game, so there may be one or two or more winners?

A. The timer has nothing to do with determining the winner. The winner is still determined by getting a winning combination or unit. What the timer does is to shut the game down. There is still no winner unless he gets the winning combination of one or more of the units.

Q. When the game has been shut down, what does the operator do to start it up again?

A. He pushes down on the control handle momentarily, and lets it come back up.

Q. In the actual operation of the game—first of all, I will ask you, that same handle was on the original game, was it not?

A. Yes, the same handle was there. They added the switch as I have indicated by the green lines, switch 208.

Q. In the altered game, does winner stay on indefinitely, until the game has been re-set? [101]

A. The winner or winners stay on until the game has been re-set.

Q. The timer apparatus they have on there then does not cut off the winning light, does it? A. No.

Q. In your opinion, as an electrical man, and one familiar with machines having electrical elements in it, is this altered game similar to or different from the original game? A. Similar to the original game.



(Testimony of Bryan R. Burke)

Q. Is it your opinion that the altered game is similar to or different from the Gibbs patent? A. Similar.

Q. I want to qualify that—in structure, function and result? A. Similar.

Mr. Huebner: You may cross examine.

Cross Examination

By Mr. Fulwider:

Q. I believe you testified you went to the University of Colorado, was it? A. That is correct.

Q. When did you graduate from the university?

A. I got my Bachelor's degree in 1930; Master's degree in 1933. [102]

Q. That was in June, I presume?

A. June 1930, and August 1933.

Q. I believe you listed various features, five I believe, of the elements or features of the Gibbs patent, which you said were novel. The first one of those features was the combination of five lights in a row, I understand, that lit up when the ball went down through the holes?

A. I did not get the first question. [103]

Q. I believe, if I understood your testimony correctly, you stated that so far as you knew that feature of having five lights in a row that lit up when the balls went through the holes was one of the features of novelty of Gibbs?

A. No, I don't believe I made that statement.

Q. Maybe you stated it was a distinct feature. Was that it? A. That is correct.

Q. By "distinct" you didn't mean a novel feature; that was new with Gibbs?

A. I don't know the shading of meaning there of the two words, novel and—

(Testimony of Bryan R. Burke)

Q. That is what I want to find out, just what you meant by "distinctive." Could you tell us?

A. Well, when I read over a patent I try to get the—

The Court: Outstanding features? Is that not what you mean?

The Witness: The outstanding features. And it seemed to me like the getting of a combination of five in these various manners was one of the outstanding features that I had not seen in any other game or any other matter that I had read.

Q. By Mr. Fulwider: That was what I was getting at. They were features that you had not seen elsewhere?

A. That is correct. [104]

Q. So far as you knew, they were new features to you?

A. That is correct.

Q. That was true of all those various features that you mentioned at the time? I think it was the one ball and the switches; the power transmittal from one circuit to the other?

A. That is correct.

Q. Have you read any other patents? I think you mentioned having read other patents. Have you read any other patents in connection with this suit?

A. Yes, I have read several.

Q. Did you read the patents that were pleaded by the defendant in the answer on file?

A. Well, I am not sure what a comprehensive list of them was; but I read a number of patents that were listed there, yes.

Q. Do you recall reading the Nakashima patent? Or do you recall them by name?

A. That Japanese name sounds familiar, yes.

(Testimony of Bryan R. Burke)

Q. Well, there were three Japanese: Nakashima, Hayashi and Higuchi.

A. Yes, I remember Nakashima and Higuchi.

Q. And Esmarian. Let me ask it this way: Mr. Huebner, I assume, gave you a number of patents to read in preparation for this case? [105]

A. That is correct.

Q. And you read all the ones he gave you?

A. That is correct.

Q. Now, I believe you stated that the feed relay in the Gibbs patent cut out the other—let me put it this way: In the Gibbs patent when a winner is accomplished, the feed relay on that game cuts out the other games; that is correct is it not?

A. That is correct, yes. The feed relay has two parts to it. When you get a winning combination it shifts its own circuit over on to the secondary line and cuts out the old line. Naturally all the rest of the units that do not have a winning combination, being on the old line yet, will go out.

Q. Now, that is the Gibbs system?

A. That is correct.

Q. I wonder if you would just trace that through one of your exhibits there, the one you used which is the patent drawing No. 6, isn't it?

Mr. Huebner: You mean Fig. 6 or Exhibit 6?

Mr. Fulwider: Yes, Fig. 6 of the patent.

In fact, you referred to Fig. 6 and 10. Perhaps you could do it all with Fig. 10. But I think there was some question as to how it operates. I think Fig. 6 will do it. Let us try that. That is more comprehensive. [106]

## (Testimony of Bryan R. Burke)

Q. Now, I wonder if you will trace on Exhibit 8-B the circuit that was made when a win is accomplished on the top row of lights, Nos. 1, 2, 3, 4, and 5?

First you might tell us: As I understand it, each of the relays is in when those five lights are closed, is that correct?

A. That is correct. If that is your winning combination, each of these relays would be closed and held closed.

Q. With each of those relays closed it is armature R-5? A. That is right.

Q. And the closing of each of those armatures sets up a segment of a circuit, an auxiliary circuit, a win circuit, we will call it?

A. Yes. It does three things. It has one set of blades on it that hold the relay closed so that after the ball goes by it will not open again. It has another set that operates the light, and the third set which is varying in complication sets up a part of these combinations that we are talking about.

Q. All right. Would you just sketch there with your pointer the circuit that is made of which the portions are set up by the closure of these armatures, the win circuit?

First let me ask you this question before we get into that: Unless the relays are operating, the lights 1, 2, 3, [107] 4 and 5 do not stay lit, do they?

A. That is correct.

Q. The momentary closing of switch "S" merely flashes the light, and if it were not for relay "R" the light would not remain energized?

A. I am not sure that it would flash the light. It looks as though it was parallel with the relay. In other

## (Testimony of Bryan R. Burke)

words, it would not come on at all unless the relay went closed.

Q. There would be no time lag there? They are simultaneous? All right.

Now, if you will, trace the win circuit as made up consecutively by those five armatures.

A. Well, we will start here with "87" for example which runs down here to "86".

It would go through "87" to "99," back from "99" through "89," to "90," to "99," to "99-prime," to "91," to "92," to "99"—apparently "99" is the same on all of these—then back to "92," "93," "94," "99," "94-prime," "95," "96," "99," then back down to this line—

Q. That line: What is the number?

A. That is "98."

Q. "98." All right.

A. "98," then it comes down here. "98" comes down here into this relay. [108]

Now, the other side—

Q. Let us see. That is into which relay?

A. Into relay R-3.

Q. R-3. Wait a minute. It comes down through "98," yes. It goes into R-3. And which relay is that?

A. That is this one here.

Q. I mean what do you call that? A. R-3?

Q. Yes. A. That is one of the feeder relays.

Q. As I understand it, there are two feeder relays?

A. That is right.

Q. R-3 and R-2? A. That is right.

Q. Then what does R-3 do?

A. All right, R-3 then closes. And when it closes it sets up a circuit that lights the top light in this manner.



(Testimony of Bryan R. Burke)

It also operates the circuit for R-2 which cuts out the power that is feeding the annunciator from the original line. And R-3 also makes the power then onto the secondary line which holds the lights on.

Q. How does it cut out the power to the original line?

A. Well, let us follow it here. When this armature is pulled down these contacts are made. And the original power that is fed through these contacts that are normally [109] closed on relay R-2. They come over and down to this line 7.

Now, you will notice if these were open that this "78" here would be closed through this set of relays. So the power shifted when these open from the one line over to the other one when they closed.

First, what would happen, to get it in sequence, this relay would close. That would close "119." Wait a minute. Is it "119"? "122," which goes over to relay R-2. That would cause relay R-2 to operate and open this circuit; and, of course, the circuit had already been closed through "121" to "R-5."

Q. Then how does that operate to cut out the other games?

A. Well, you will notice there is a common terminal here; and in the connection all these relays as indicated by R-2 are connected together in such a way, then, that if any one of R-3 relays go in, any one of the various ones, it will pull open all of the relays in all of the banks, cutting out all of these lights.

Q. R-3 does not do that itself, does it?

A. That is right.

Q. It does it by energizing R-2?

A. That is correct.

(Testimony of Bryan R. Burke)

Q. Which in turn opens the contact? [110]

A. That is correct.

Q. So that when a win is accomplished in Gibbs, you first energize the hold relay or what you call the second feeder relay R-3, which in turn energizes the relay R-2?

A. That is correct.

Q. On all the various games?

A. That is correct.

Q. All of those relays open, is that correct?

A. That is correct.

Q. That is, they operate the contact by reason of the—

A. If the table does not have a winning combination on it to close it at "121" to "R-5," then naturally the lights will go out.

Q. So that the—pardon me. Were you finished?

A. Yes.

Q. So that the energization—I will put it this way—so that the completion of a win circuit energizes a relay in each of the machines?

A. That is correct.

Q. And the energization of that relay in turn cuts the circuit for that particular machine?

A. It cuts the circuit for that particular machine and all of the other machines.

Q. Now, I mean each machine has its own particular cut-off? [111]

A. That is correct.

Q. Its own relay R-2?

A. That is correct.

Q. So that if any one of those relays R-2, for example, stuck and did not energize or did not operate, then that particular machine would stay on, would it not?

A. That is correct.

(Testimony of Bryan R. Burke)

Q. There is no cutting off of the main line in the Gibbs patent, is there, I mean in pursuance of a win?

A. There is no cutting of one main line only in this respect: that that main line comes into all of the tables and then passes through the contact of relay 2.

Q. However, there are main lines that go from one table to the next, are there not?

A. That is correct.

Q. There is a main switch "68." Do you recall the number? Or do you have a copy of the Gibbs patent there handy that you could refer to?

A. No, I haven't. [112]

Q. You might just keep this—

Mr. Huebner: What figure are you talking about?

Mr. Fulwider: This one.

Q. Calling your attention to Figure 10 of the Gibbs patent; there is a main switch, "68," in the main feed line "59," is there not?

A. That is correct.

Q. And the power in the main feed line "59" and likewise in the feed line "61" is never cut off except when that main operating switch is operated, is that right?

A. That is correct.

Q. In other words, the operation of these various relays in the various units has nothing to do with whether or not there is power in the main lines "59" and "61"?

A. No.

Q. Now, in the Faulkner apparatus, the Fawn game, I believe you called the delay "S", was it, equivalent to the two feeder relays of Gibbs? Will you let me ask you this question first:

It is a fact, is it not, that in the Fawn game, both the old and the new, that the operation of the switch or relay

MATTHEW B.

(Testimony of Bryan R. Burke)

"S" cuts off all power in main feed lines "77" and "78" for all other units, as a matter of fact, for all the units?

A. I don't follow you there exactly. [113]

Q. Let me put it this way—

A. You said switch "S"?

Q. The operation of switch "S" de-energizes the coil "111", does it not? A. Indirectly, yes.

Q. That permits the opening of the main switch "110"? A. That is correct.

Q. So that the other units are cut out by reason of opening the main switch "110"?

A. That is provided they don't have a winning combination also.

Q. Yes. In other words, all the other non-winning units— A. That's right.

Q. —so that the main line is de-energized?

A. That is right, that is, line "78" in Figure 9.

Q. That's right. I believe you stated that you worked for Pacific Electro Products Company?

A. That is correct.

Q. Is Mr. Wiser connected with that company?

A. Yes.

Q. What is his capacity?

A. He is my supervisor. With respect to me, is that what you mean?

Q. He works for the same company? [114]

A. Yes.

Q. You are both employees of Pacific Electro?

A. That is right.

Q. Do you know whether or not he is one of the owners of it? A. Yes.

Q. He is? A. He is.

(Testimony of Bryan R. Burke)

Q. Now, I assume that is how you happened to get into this case as a witness, through Mr. Wiser?

A. Yes.

Q. You have just told us how the passing of a ball through one of the pockets in the Gibbs play board, play field, operates a switch and sets up a portion of the win circuit.

There is no such circuit in the Fawn game apparatus, is there, comparable? Or, put it this way: Do you find or have you found in the Fawn game apparatus any, shall we say, segmental circuit where a portion of that circuit is made up each time a ball goes through a pocket?

A. No. That is correct. There is a circuit in the Fawn game that is finished, completed, by switch "M".

Q. You say "completed." Now, you mean there is a circuit of which the mercoïd switch "M" is a part; and when the mercoïd switch "M" is tipped, then that completes that circuit? [115]

A. That is right, when you get a combination of five.

Q. That is right. When five balls have gone through five pockets in a row, then the five wheels having freed, the win bar goes over and the shaft that carries the mercoïd "M" is caused to rotate mechanically, is that correct?

A. That is right.

Q. Now, the circuit of which the mercoïd or mercury switch "M" is a part is not connected electrically with the light circuits, is it?

A. Yes, it gets its power from the same source.

Q. Yes. But I mean other than that, no portion of it is made by the closing of any of the light switches?

A. I don't know as I get what you mean exactly. No portion of the circuit?



(Testimony of Bryan R. Burke)

Q. Let us ask it this way: None of the light switches "58" are in the win circuit of which the solenoid "M" is a part? In other words, when I say "win"—

A. That is correct.

Q. Yes.

A. Those switches operate the lights on the enunciator panel.

Q. So the switches "58" sole function is to light the lights? A. That is right.

Q. Now, you mentioned that several of the claims of [116] the patent included what you called the electrical way of operating the Gibbs game, whereas several of the claims did not.

Can you tell us which of those claims is directed to the electrical circuit, electrical form of the game and which, if any, are directed to the mechanical form, if any?

A. No. 1 mentions specifically relays, and No. 2 is a corollary of No. 1; so, therefore, it would also mention it.

Mr. Fulwider: What was the answer, please?

(Answer read by the reporter.) [117]

A. The rest of the claims don't state specifically.

The Court: What claim are you referring to?

A. 3, 4, 5, 6, 7, 8, 9 and 10. I might amend that. I believe No. 4 does mention the word "relay" in it, so let us put it 3, 5, 6, 7, 8, 9 and 10.

Q. Where is relay mentioned in 4? What line?

A. Line 19.

Q. "a relay and an armature"?

Mr. Huebner: Your Honor, Claim 5 is dependent on Claim 4.

The Witness: That's right.

(Testimony of Bryan R. Burke)

The Court: I know they repeated, and add the signal.

A. So 5 should be eliminated also.

Q. By Mr. Fulwider: I believe in describing the Fawn game you did not find any relay in the Fawn game corresponding to the relay R in the Gibbs game, did you?

A. That is correct. Not a relay of an electrical nature.

Q. You say not a relay of an electrical nature?

A. Yes.

Q. What other kind of relays are there?

A. A mechanical relaying of power, but not ordinarily called such.

Q. I assume you did not find any kind of relay in there, either electrical or mechanical, did you? [118]

A. I wouldn't say there was not a mechanical relay.

Q. You did not find, strictly speaking, a relay in there, did you? A. Yes, there are relays in the game.

Q. I am sorry. I did not mean to say no relays in the game, but you did not find a relay plugged up with the switch in any pocket?

A. No, not like the ordinary sense of the word, as we commonly call a relay.

The Court: The word relay is used in these claims as it is used in electrical science?

A. That's right; operated by electricity, in which there is an armature, which is pulled down, which makes contacts.

Q. By Mr. Fulwider: Let us turn our attention at the moment to the new Fawn game, which you said was practically the same as the old Fawn game, and you base that opinion, I assume, on the points that you brought out in your testimony; first, that there was a circuit for the winning lamp, but there was no bulb in it, and then

(Testimony of Bryan R. Burke)

the various wire changes that you mention. Did you compare the spare bulbs which you said you found under the Fawn game with the bulbs which are used in lights 125?

A. No, I don't think I saw the actual bulb 125.

Q. Then you don't know whether or not the bulbs you [119] saw were for use in the winning light circuit that the old Fawn game had, or not, do you?

A. This much I do know: there were numerous spare bulbs. By numerous, I mean 10 or 15, lying under each unit. The question was brought up, and I asked Mr. Hatherell, I believe, or Mr. Mattingly, what those bulbs were. He said, "They are spare bulbs we use to replace the bulbs in the annunciator panel."

Q. That is, bulbs like 1 to 25?

A. Yes. One bulb we figured up was put into light L, and it lighted.

Q. So it was more than likely that in the circuit the same bulbs were used in the annunciator lights and the so-called winning lights?

A. That is correct.

Q. Is it your opinion, as an electrical expert in this case, that the mere change of only one wire in an electrical circuit works a relatively minor change in that circuit?

A. It would depend upon what part of the circuit it is. If it is in a crucial point in the circuit, it might make more difference than in some remote part. In other words, if we cut one wire in Light L, it would only turn out that light. Generally speaking, I would say changing one wire would not affect the complete circuit very much.

Q. That is probably true then, I suppose, in what [120] are the typical circuits, radar circuits, radio, electric

(Testimony of Bryan R. Burke)

motors, to just change one wire in the motor would not make any difference, I suppose, in its operation?

A. I don't say that. It depends upon whether it is a crucial spot. In radar, it might limp along with one wire off in one spot. In another spot it would not work at all.

Q. It does not make any difference whether it is one wire, or whether it is 50, it is what you do by which the change is effected, by the removal of that wire?

Mr. Huebner: This is not cross examination.

The Court: I think we are getting away from the specific problem. The witness testified and gave his reasons why in a particular spot disconnecting one wire would not amount to much. Now to go over the entire field, and tell why it would not interfere with the function is not enlightening.

Mr. Fulwider: That was my thought. I was astounded when I got the inference from his testimony that only the change of one wire—

The Court: He has testified what he meant by that. Instead of reading it upon the claims he has shown, from a practical standpoint, how the changing of one wire, which would take 15 minutes, would throw this new machine back into the old one.

Mr. Fulwider: If that is the gist of his testimony, I [121] was mistaken. I was thinking it was the other way.

The Court: I don't know much about electricity, but I know what the witness testified to. Yesterday I was dealing with maritime law, and today I am dealing with patent law. I have to learn fast.

Mr. Fulwider: I guess I was over-suspicious from the implication I got from what he said.

(Testimony of Bryan R. Burke)

Mr. Huebner: If I understood his testimony correctly he said that the two games were practically identical. Would you restate your opinion as to the old Fawn game, and the new Fawn game?

A. The points that I had discussed up to that time,—and by those points I mean where I discussed the fact that a ball was moved over the field, fell through a hole, operated the paddle, and came back to the player,—the fact that you get a combination of five, to get the winner, the fact that you had an annunciator panel with 25 lights arranged in a particular manner and the fact that you had originally a secondary circuit through which the lights were switched,—those points were practically identical in the Fawn game and the Gibbs patent.

Q. It is upon those points you are basing your opinion?

A. That is correct.

The Court: Let me ask you this question: Taking the combination by way of its result, is there any difference in [122] the result accomplished by one or the other?

A. No, I don't believe so. The result is the same in both cases.

Q. By Mr. Fulwider: In the Fawn game, when a person won, or a player won the game, the other units would be all cut off, wouldn't they, so that no further play could be had?

A. That is correct.

Q. As soon as you got a winner,—not necessarily one winner?

A. You may have several.

Q. If you had two simultaneous winners in the old game, and in the Gibbs game, then the circuit on the other machine is cut off?

A. Yes, I would say if you compared it to the Gibbs game. I guess that is what you mean by simultaneous. That would be correct.



(Testimony of Bryan R. Burke)

Q. Let us refer to the Gibbs game then more specifically. As I understand that game, when you get a winner of one of the units, in the Gibbs game, relays R-2 and R-3 operate practically instantly cut off all of the non-winning games, that is true? A. That is correct.

Q. And at the same time they energize the win light L, and ring a bell? A. That is correct. [123]

Q. In the new Fawn game, that has the timer, and which you inspected the other day, it is a fact, isn't it, that unless and until the timer throws a cut-off switch, then all of the games can continue to play?

A. That is correct.

Q. In other words, you may have a winner in the first 30 seconds of play, and then nothing further happens to his game, and he can keep on playing, but he doesn't hurt anybody, while his neighbor can keep right on playing, and maybe get a win in the next 10 or 15 seconds, and so on, and you have a situation where all 16 of them win, if they were successful?

A. That is correct. If the timer were set for longer than the 30 seconds you mention, that man who got the winning combination at the end of 30 seconds, his lights would indicate it.

Q. As I remember it, it runs about a minute and a half. Didn't it, while you were down there? Did you play the game? A. It can be adjusted.

Q. Yes, it is adjustable.

A. The one we looked at, we did not time. It could be adjusted over quite a wide range, I believe, from looking at it.

(Testimony of Bryan R. Burke)

Q. You did not time the timer on the other bank of machines that were operating that day you were down there? [124] A. No.

Q. So, for the sake of argument, it would take a minute and a half to win, which I think approximately is the fact, that it takes the timer to run its course, then you might have as many winners as could win during that time element? A. That is correct.

Q. The first winner wins, nothing happens?

A. I wouldn't say that. There is something happens when the first man wins. He gets an indication and knows, I am in; I don't have to play any longer.

Q. He can see he gets five lights, and as long as he can count the five he wins?

A. He sees the five lights. There is a flicker. He sees the flicker, and knows he is set.

Q. Does anybody tell him he will have to look for a flicker of those lights to know he has won?

The Court: Is it supposed to be silent? Can you get what you are doing?

Mr. Fulwider: That is the trick of it. If they get a high-class type of relay, there wouldn't be any flicker or click. A. That is correct.

Q. Do you agree with the statement, that you can install a relay that would throw rapidly, and you would not get a flicker, and you would not get a click? [125]

A. I don't know whether there are any on the market or not, but it is possible.

Q. The average relay that they put in a game of that type would be bound to have a little click?

A. That is correct.

(Testimony of Bryan R. Burke)

The Court: So long as you are limiting the game to a minute and a half, what advantage is there from the fact that the game does not stop, because when the first period has run, you are not letting them play right along, or use the machine, otherwise it would become unprofitable.

Mr. Fulwider: That is right. When a man wins, gets the win signal there, he can wait until the clock goes off, so whether there would be an audible evidence of that, does not have anything to do with winning the game.

The Court: I thought you were trying to show there was some advantage to the older machine from the fact that when a man has won the others are stopped automatically.

Mr. Fulwider: I believe that is correct. I will ask the witness that question;

Q. In the Gibbs patent is there any advantage in the Gibbs type of game in having the win circuit shut off on the other games?

A. I have not operated one of those games. I am not in a position to know what would be advantageous.

The Court: You have to figure out the percentage basis. [126] What do they put in, 10 cents?

Mr. Fulwider: Sometimes 10 and sometimes 20.

The Court: The house gets four when a man wins?

Mr. Fulwider: The faster the win, the more money they get.

Q. Is there any advantage you can think of in the Faulkner new Fawn game to the house, and having the kind of relay that makes the lights flicker, and makes a noise when it closes?

A. I imagine the expense of getting the other type of relay would be considered.

(Testimony of Bryan R. Burke)

Q. That is about the only advantage, isn't it?

A. Yes.

Mr. Fulwider: That will be all.

The Court: Any redirect?

Mr. Huebner: No.

(Short recess.) [127]

Mr. Huebner: We have three or four questions, your Honor.

The Court: All right.

Redirect Examination

By Mr. Huebner:

Q. Mr. Burke, have you any interest in this litigation or in any decision rendered thereon? A. No.

Q. You said something on cross examination as to the switches "58" in the Fawn game having only the function of closing the circuit for the lights.

Is it also a fact and did you not previously explain that the levers in connection with them function to set up mechanically a combination, winning combination bar which operates the mercury switch "M"?

A. That is correct. The bar that is struck by the ball passing through the hole closes the switch; that is, the electricity goes through the bar at the same time the bar sets up a portion of the winning combination.

Q. All right. In mentioning that certain claims of the patent in suit, namely, 1, 2, 4 and 5, referred to relays which were probably intended to be the electrical relays, did you have in mind that the word "armature" used in those claims was in connection with the description of the word "relays"? [128] A. Yes.

(Testimony of Bryan R. Burke)

Q. And the word "armature" would tend to indicate that it was an electrical relay, is that correct?

A. Yes.

Q. Refer, please, to Exhibit 9, Plaintiff's Exhibit 9. When a winning circuit is established in one of those units, what happens to relay "S" and what is the result of that action?

A. You mean a winning combination, when a winning combination occurs?

Q. Yes.

A. The switch blades "84" and "109" sweep over to the left in the drawing. The switch blade "84" switches the original current from the original line over to the secondary line.

Switch "109" operates to shut down the game in the old combination. In the new combination it is not used. The timer is used in its place.

Q. Well, the timer shuts down the game as a substitute for the switch blade "109" in the alerted game, is that correct?

A. That is correct.

Q. You referred to the patent, Gibbs patent, relays R-2 and R-3.

I would like to clear up any possible ambiguity of [129] the statement.

Take the Gibbs relay R-3. What does that correspond to in the Fawn game?

A. That corresponds to relay "S".



(Testimony of Bryan R. Burke)

Q. And by relay "S" you include the coil "98" and the two switch blades "109" and "84"?

A. That is correct.

Q. Now, refer to the Gibbs relay R-2. What element in the Fawn game corresponds to that?

A. The element in the Fawn game that corresponds to R-2 in the Gibbs game is partly in the relay of which the coil is marked "106" and "112". The blade on it is marked "112". It also has part of the function of one of the contacts on relay "S".

Q. In the altered game, the timer might be said to take the place of relay R-2?

A. That is correct.

Mr. Huebner: No further questions.

The Court: All right. Anything further?

Mr. Fulwider: We have no further questions.

The Court: All right.

Mr. Huebner: Plaintiff rests.

The Court: Step down, sir.

(Witness excused.)

The Court: All right, put on your proof. [130]

Mr. Fulwider: We would like to call Mr. Gibbs under 43-B.

The Court: All right. Mr. Gibbs.

## JOHN T. GIBBS,

called as a witness by and on behalf of the plaintiff and having been previously duly sworn, was recalled by the defendant under Section 43-B, and testified further as follows:

## Direct Examination

By Mr. Fulwider:

Q. Now, Mr. Gibbs, I believe your testimony this morning was that the first one of these games built, according to your patent, was built in December of 1930; is that correct?

A. It was completed in December, 1930.

Q. What?

A. It was completed in December, 1930.

Q. It was completed in December, '30. When was it started?

A. I believe the actual manufacturer of that game started possibly 90 days before to four months.

Q. Approximately when, as best you can remember, did you first conceive the idea of the alleged invention in the patent in suit?

A. Well, to conceive the main idea, I can't answer [131] that correctly. It was an evolution of several things in my mind to arrive at the game as it is now.

Q. You might just tell us that chain of events in your own words. Perhaps that is the easiest.

A. Well, I was thinking about an amusement device for a long time.

Q. I can't hear you very well.

A. I was thinking about inventing an amusement device for a long time; and as certain thoughts came into my mind I applied them if I thought they were good, and

(Testimony of John T. Gibbs)

if not I threw them away until I arrived at a certain point where I thought I had a game which would appeal to the public's fancy.

Q. Approximately when did you feel that you had a game that would appeal to the public?

A. I imagine about nine months before the completion of the equipment in December, '30.

Q. Along about the first of 1930, then?

A. That's right.

Q. In what business were you engaged at the time you conceived the invention, say along the first of the year 1930?

A. Well, I had an interest in this amusement device which I mentioned in my earlier testimony.

Q. That was the Grunt Derby? [132]

A. The Grunt Derby, yes. And I had some other interests. I don't recall what the full occupation was at—

The Court: Electricity is not your profession?

The Witness: No, it is not, your Honor.

Q. By Mr. Fulwider: Then you say you had an interest in the Grunt Derby. Were you operating the Grunt Derby? What was that interest?

A. I think I owned about 25 per cent of the corporation in that.

Q. It was owned by a corporation? A. Yes, sir.

Q. Did you have anything to do with the operation of the game itself?

A. No, not the actual supervision or anything. It was just in checking up that it was run properly and that all the financial returns were coming through that I could possibly find.

(Testimony of John T. Gibbs)

Q. That is, you supervised the operation. That was down at Long Beach, was it not? A. Yes.

The Court: How old are you, Mr. Gibbs?

The Witness: I am 38.

The Court: You were pretty young then?

The Witness: Yes, I admit I was.

The Court: All right. [133]

Q. By Mr. Fulwider: How long had you been in that amusement concession business, that is, how long prior to January, 1930?

The Court: He was not of age yet. You will make a child prodigy out of him yet.

Mr. Fulwider: There is an awful lot of circuits in that patent.

The Court: All right.

The Witness: May I have the question again?

(Question read by the reporter.)

The Witness: We opened that game, if my recollection is correct, I believe in about May of '29.

Q. That was the pig game, the Grunt Derby?

A. Yet, the Grunt Derby, yes.

Q. Did you ever operate any other concession games other than the pig game prior to the building and operating of these games of your patent?

A. Well, I did work in them at Saltair Beach, Salt Lake City, during the summer vacations to help pay my way through school.

Q. That was in connection with concession games and rides and general amusement business?

A. Yes, that is right.

(Testimony of John T. Gibbs)

Q. Were you familiar with any other competitive games such as the pig game? I think you mentioned one other this [134] morning, the rabbit game, was it?

A. Yes.

Q. Was that similar to the pig game?

A. That preceded the pig game.

Q. That preceded the pig game? A. Yes.

Q. And how did that operate?

A. Well, there was a paddle which had a connection to another paddle ahead of you which was enclosed in a box, and on the paddle on this enclosure it had a ball resting there; and by hammering the paddle down it flipped the ball into one or two pockets which touched a lever and then the rabbit, each time it would go into one pocket, it would move a jump; and if you were lucky enough to get another jump, would jump two pockets.

Q. And each person had one of those little ball gadgets and his own rabbit and each one tried to get his rabbit over the hill first?

A. That's right. They were made up in series of ten or twelve people competing against one another.

Q. Then the pig game, I take it, was just about the same? How was the operation of the pig game? What made the pigs go up the hill?

A. I believe it was an electric motor. You mean what the player had to do? [135]

Q. Yes, that is right.

A. I believe they had some kind of a board with about three holes at the end of it, or five, and they had three or four regular pool balls; and at a given signal they would scramble the four or five balls up there, and then they would drop through. And as the paddle would move,

(Testimony of John T. Gibbs)

the pig would be propelled a certain distance. The object was to get the pig at the top first, and he would squeal and run down.

Q. Did they ever play it by rolling one ball at a time?

A. I have never seen it run that way, no.

Q. In the game that you operated you had a group of balls, and you shoved them all up at once, is that it?

A. Yes.

Q. What did the operator use to push all these balls at one time?

A. They returned.

Q. What?

A. They returned.

Q. I guess I misunderstood you. I thought you said you played all the balls at once?

A. They had five balls. It would be silly to throw one at a time when they could throw five and roll them all up. You were after a faster result. So they just pushed them all up, and some of them would return and then they [136] would push them up again.

Q. How long did you operate that pig game?

A. Well, I sold my interest in it, I believe, a month or so before I started the manufacture of this first Fascination Unit.

Q. That would be a little more than 90 days prior to December, along in the middle of 1930, then?

A. That's right.

Q. Because you were not operating the pig game when you first started building the Fascination game?

A. No.

Q. Where did you purchase it? Or did you purchase the pig game? Or did you build it yourself?

A. No, I purchased the pig game from a man by the name of Wallace.



(Testimony of John T. Gibbs)

Q. Wallace? — A. Yes.

Q. Where was he located?

A. Well, he was originally a Salt Lake man; and I had worked with him as a boy at Salt Lake City. That is where I met him. And then he moved down and opened one in Ocean Park, I believe.

Q. He had a pig game in Ocean Park then?

A. Yes.

Q. And your corporation bought the pig game from Mr. [137] Wallace? A. That is right.

Q. Do you remember what his initials were?

A. I believe it was Lawrence A.

Q. Lawrence A.? A. Yes.

Q. Do you know whether or not he is still in Ocean Park? A. He is still there, yes.

Mr. Huebner: Your Honor,—

The Court: I do not think this is material. I was expecting you to object by this time.

Mr. Fulwider: It is material in this, your Honor: To show what background this plaintiff has had as the inventor.

The Court: He does not have to prove a background at all. Have you heard of the spark-of-genius theory lately advanced by Mr. Justice Douglas?

I am not interested in the way in which this witness started.

Mr. Fulwider: May I ask him this one question, as to whether or not he ever operated a Tango or Bingo game?

The Court: Well, you may ask that question. But I do not want to hear any more pig or rabbit games.

Mr. Fulwider: I am sorry if I went into that too far. [138]

(Testimony of John T. Gibbs)

The Court: You may answer that question.

The Witness: What was the question?

Q. By Mr. Fulwider: Did you ever operate a Bingo or Tango game?

A. I operated a Bingo game in 1933.

Q. In '33. Not prior to— A. '32.

Q. —the granting of this patent? A. Oh, no.

The Court: I gather you originally came from Salt Lake?

The Witness: Salt Lake City, yes.

The Court: All right, go on.

Q. By Mr. Fulwider: I believe Mr. James Cannon of Cannon Electric was the man with whom you dealt in building that first game?

A. His company manufactured the first equipment for me, yes.

Q. He manufactured it? A. Yes.

Q. Do you recall when you had your first conversation with Mr. Cannon concerning building that first game?

A. I can't recall the exact date. It was a series—there was a series of dates there. I believe we had been negotiating with him for possibly 30 days before we gave him the order to build it. [139]

Q. As best you can recollect, will you tell us very briefly what your first conversation was with Mr. Cannon when you went to him to build your game? What did you tell him and what did you give him and what did he say to you?

A. Well, Mr. Cannon was referred to me by a man in the Graybar Electric, and I had gone to the Graybar Electric to try and find relays which they had in stock which would close more than one circuit because at that

(Testimony of John T. Gibbs)

time there were very few relays on the market that would close more than one circuit. So I had a long conference with him, and his company could not do it.

Q. Do you recall the name of that person?

A. I believe it was Porter. I couldn't recall his initials because I haven't seen him since.

Q. You would not remember his first name?

A. No, I really could not. I don't even know if he is employed there or not.

Q. All right, proceed. I did not mean to interrupt.

A. The Graybar people were not in the specialty business, and he referred me to the Cannon Electric. He said they were specialty people and took small orders for special relays. I originally went to Mr. Cannon to purchase relays.

Q. I see. Did you tell him what type relays you wanted to purchase? [140]

A. Yes, I did.

Q. What type relays was that?

A. The main thing I was interested in was a 4-pole relay which would complete or hold four circuits.

Q. Four circuits? A. Yes.

Q. Did he have any such relays available?

A. Yes, he had those relays. I think he had used them in hospital alarm systems, or something; and he had the dies for them to make them up for me.

Q. As you say, "for hospitals," I assume for annunciator boards in hospitals?

A. That is right, alarm systems, and that sort of thing. His main work at that time was in that specialty field. [141]

(Testimony of John T. Gibbs)

Q. Did you show any drawings to Mr. Cannon? Did you have any drawings with you when you first went over there?

A. Yes. I don't know whether I had a drawing at the first time I went there because I went there originally for relays because I was going to manufacture, try and manufacture the game myself. At later conferences with him naturally I had several drawings, and I was putting them in my pencil writing; and he would draft from that and work on the board until I completed or translated my idea to him of the circuits involved.

Q. As you made the sketches or the wiring diagrams in rough form, then he took those and made better ones, is that it?

A. Well, I imagine so. Mine couldn't be easily read.

Q. Let me ask you this: How complete were those drawings that you made for Mr. Cannon?

A. Well, as I recall, we had two problems to solve in the game. That was to be able to have a step-up system of closing a circuit to complete one circuit for a win. The other was to transfer power from one circuit to another; and the only thing that was required in that was the completing one circuit through and down through your winning relay which would close your R-2 relay there, which would break the circuit on the other games. It was not a very difficult problem at that time, I don't think. This looks far more [142] complicated than it was.

Q. I was just going to ask you how completely you sketched those out for him. I assume that much of the circuit was your own idea?

A. Well, that is the complete circuit, I would say. As far as anything else, all your other circuits in there

(Testimony of John T. Gibbs)

are completion of your other five in a row so that none are overlapping.

Q. So by the time you went to Mr. Cannon you had completed in your own mind at least those circuits so that you were able to sketch them out for him?

A. Yes. As I recall, I think it was a very rough sketch and we had a great discussion. After all, he was building it for me.

Q. Were those the first drawings you had ever made outlining those sketches?

A. No. I had spent quite a bit of time working on it because my knowledge of electricity had only been as a boy which I used to play a great deal on it; and, of course, I took a slow method of doing things. I quite often would have to take a relay and see if something different would not happen than I thought it would. But I had done a great deal of experimenting with it before.

Q. Did you get any assistance from Mr. Cannon in making those first sketches in telling you what to do and [143] how to do it?

A. I imagine he drew up the diagram for his shop work. I didn't do that. I wasn't at the time capable of drawing a mechanical drawing, nor am I today.

Q. Did you get any assistance from anyone else in making those sketches or drawings?

A. No, not the ones I made. I don't know of any assistance that was on it. Mr. Cannon might have actually, in making the relays, made a nicer and neater unit, improved it that way; but as far as the original idea, it was entirely my own. As a matter of fact, he helped me finance the original equipment. That is why I was so favorable in going to him.

(Testimony of John T. Gibbs)

Q. You say it originally was your own. How complete was that?

A. Well, the original idea is the complete game as it is. The operation of it—I designed the board, the playing surface, all the measurements of everything, the combination of the five in a hole and the five in a row and the entire game as it is.

Q. You laid out enough in that wiring diagram from your own knowledge so that Mr. Cannon could follow on from there?

A. Yes. That was his business. He was a manufacturing man, and I was a young fellow who had an idea. [144]

Q. You knew that wanted 4-pole relays when you went to see him. Did you know, for example, that you wanted a separate relay for each of the annunciator lights?

A. Yes, I knew that because I could not complete the circuits. I could complete one set of circuits with a bar, but they would intermix with other ones if I did not have a separate one for each hole. [145]

Q. Do you still have any of those sketches that you made? A. Not that I know of, no.

Q. Do you have any of the drawings of your working diagram? A. No, not that I know of.

Q. You haven't saved any of them? A. No.

Q. So far as you remember, you only just made your own sketches, gave them to Cannon, and he made up his own drawings? Does he have his drawings?



(Testimony of John T. Gibbs)

A. I don't know whether he has or not. That I would not know.

Q. I wonder, just to see if you remember your circuits of 1930,—will you trace for us what happens when five balls go consecutively in the holes 1, 2, 3, 4, and 5 on big

6? A. Do you want me to trace the circuit out?

Q. Yes, trace the circuit, and tell me in as few words as you can what happens?

Mr. Huebner: Is this directed to the defense that Mr. Gibbs is not the inventor, the sole inventor?

Mr. Fulwider: That is correct.

Mr. Huebner: I don't think this is the proper method to ascertain whether he is or is not. [146]

Mr. Fulwider: It will only take a couple of minutes to see whether Mr. Gibbs understands his own working diagram.

—The Court: I will sustain the objection. If a man has an idea he does not have to be able to pass 70 per cent on electricity. You are probably trying to show he did not know enough. It does not make any difference.

Mr. Fulwider: That is true. On the other hand, he has to know enough at least—

The Court: No, he does not have to know anything. If he has an idea, if he can get somebody to articulate it for him, and have it put in the form of print. You know that. The disclosure is confidential between the man he employs, and somebody else. What he did is absolutely immaterial. It would not be a defense on a charge of infringement. So let us not waste time.

(Testimony of John T. Gibbs)

Mr. Fulwider: It was my contention, your Honor, that it was a matter of joint invention.

The Court: That is not the way to prove it. Bring the man who claimed. Bring Cannon, and ask him if he claims this invention. A man who has an idea, and goes to one mechanically skilled in the art, and asks him to outline it, is not making the other man a partner in a joint invention. You know that. Let us not waste time. You have pleaded joint invention. When you plead a joint invention you have got to charge him with swearing falsely. You have charged him with that. [147] You have to charge him directly with false swearing; that he took somebody else's invention, and put it in as his own. You did not do that.

Mr. Fulwider: We state he was not the sole inventor.

The Court: You cannot go on a fishing expedition. You have to prove he did not invent it.

Mr. Fulwider: We could call Mr. Cannon, of course, as to his contribution.

The Court: If Cannon will claim he is a joint inventor, bring him up. You can prove it by showing he hired this man.

Mr. Fulwider: That is probably the better way to do it.

The Court: That is the better way, if you believe he will so swear.

Mr. Fulwider: I believe that is all.

Mr. Huebner: No questions.

Mr. Fulwider: I will call Mr. Mattingly as our next witness.

HAROLD W. MATTINGLY,

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Harold W. Mattingly. [148]

Direct Examination

By Mr. Fulwider:

Q. Mr. Mattingly, would you state what your profession is?

A. I am an attorney at law, specializing in the practice of patent law in the City of Los Angeles.

Q. Will you also tell us your schooling and experience as pertains to electrical engineering, and electrical structures?

A. I graduated from a technical high school, in which I specialized in electricity. And during the time that I was in high school I worked in the evenings, and week ends and summer vacations in various electrical shops, including the Washington Steel and Ordnance Company, in Washington, D. C.

After graduating I went into the Army in 1918, and after coming out of the Army I qualified as an electrician in United States Government, and spent from 1919 to 1923 in that position. I was electrician in charge of the electrical work in the United States Patent Office for the last two of those years.

When I left that position I went into the patent office as an examiner in one of the electrical divisions, and spent four years in that position, examining patent applications relating to electrical signaling systems, electrical lamps, annunciators, and devices of that character. [149]

(Testimony of Harold W. Mattingly)

Subsequent to that period, I left the patent office in 1927 to go to the patent department of the Westinghouse Electric and Manufacturing Company, and in that position I was in charge of the patent section of the Westinghouse Company, which handled the electrical elevators and electrical signal control systems.

In 1930 I left the Westinghouse Company, and came to Los Angeles to join the office of Lyon and Lyon as a patent lawyer, and continued that until 1937, and since 1937 I have had my own practice.

During the years of my practice with Lyon and Lyon, and in my office, I have handled many electrical applications.

Q. Did you, in the course of your professional activities, ever have occasion to become acquainted with marble games or electrically operated games, in the '30's?

A. Yes, I believe it was about 1931, when I was with Lyon and Lyon, they had a client, Mr. J. Frank Myer, who was head of the Exhibit Supply Company, at that time actively engaged in the developing and building of electrically operated pinball games; that is, pinball games in which a ball is rolled over a playing board surface, and either passes through holes to make contacts to light lights, ring bells, or hit bumpers, to do the same thing. I had a number of applications for a patent on pin-ball games. Also I acted as expert witness for the Exhibit Supply Company in Chicago, [150] which had to do with an iron claw game. That is, a game in which a coin is inserted in a machine, which causes a kind of a scoop to drop down on a number of prizes in a little housing, and if a person operating the game is sufficiently skillful that will cause the scoop to pick up the particular prize they want.

(Testimony of Harold W. Mattingly)

The Court: That is the theory?

A. It is the theory, and does not work very often.

Q. By Mr. Fulwider: Are you familiar with the Gibbs patent in suit, No. 1,906,960? A. I am.

Q. I wonder if you would explain to us briefly, so we might have a summary in one place in the record, how the game of that patent operates?

A. As disclosed in the Gibbs patent, the game consists of a number of game units, which are referred to as U<sup>2</sup>, U<sup>3</sup>, and so forth all along in a row, so that a separate player can play and operate each of the separate units.

Each of the units comprises one game board, which has, in the arrangement shown in the patent, 25 holes arranged in longitudinal, lateral and diagonal rows in the face of the board, so that a ball, which is projected or thrown or rolled over the surface of the board, may pass through any one of those holes and then, having passed through the hole, may return to the player for a second passage over the surface [151] of the playing board.

Q. Are the pockets in the boards and the annunciator lights arranged in the same order?

A. At the rear end of the board there is a vertical cabinet, in which there are 25 lights arranged in longitudinal, lateral and diagonal rows, or we can say in vertical, horizontal and diagonal rows, in the same order and the same arrangement as the holes are arranged on the playing board.

At each of the holes there is a switch which is described as comprising the blades 53 and 54, which will be moved together to make an electrical contact as the ball passes through the hole, and each of these switches is connected to one of the annunciator lights on the annunciator panel.

(Testimony of Harold W. Mattingly)

The switches S, which are connected to each of the lights on the annunciator panel, are also connected in the circuit, in parallel with the lamp 1, or the lamp 2 and so on. It operates a relay coil in response to the momentary closing of the switch S, and draws its armature, identified as R'.

Q. That relay is indicated as R?

A. That is correct. All of the relays in Fig. 6 are identified by the letter R, with no distinguishing characteristic to tell what lamp they are associated with. [152]

Q. By the way, do you have some copies of this illustrated enlargement of composite Figure 6 and Figure 10 of the Gibbs patent?

A. I have here a photostatic copy slightly enlarged of Figure 6 of the Gibbs patent, to which I added the four conductors at the bottom of the sheet, and a representation of the transformer 65.

The main switch 68, and the bell 67, which were taken from Figure 10 of the Gibbs patent, and I also added to the diagram in Figure 6 the conductor 114', which is shown in Figure 10, but which is omitted from Figure 6.

Mr. Fulwider: I am through with these. I will give one to counsel, and may this be marked Defendant's B.

Mr. Huebner: Are you offering it in evidence?

Mr. Fulwider: Yes.

Mr. Huebner: I object to it, your Honor, as incompetent for any purpose, except that of illustrating the testimony of this witness.

Mr. Fulwider: That is just what it is offered in evidence for.



(Testimony of Harold W. Mattingly)

The Court: He has superimposed something on something else, to be merely used in illustrating his opinion. You are not an attorney, Mr. Mattingly?

A. Yes, I am.

Q. I mean an attorney at law? [153]

A. Yes, I am an attorney at law.

Q. You didn't tell us when you spent any time in studying law. You told us of going to high school.

A. Perhaps I should elaborate my statement of qualification,

Q. You stated you were an electrician, and that you had gone away to the Army.

Q. By Mr. Fulwider: You went to the George Washington University?

A. While I was in the United States Patent Office as Patent Examiner, I attended the George Washington University Law School at night, and completed my law course there to the extent at least of passing the bar of the District of Columbia, and later the California Bar, when I came to California.

Mr. Fulwider: He was attorney of record for the defendant in Gibbs vs. Hicks.

The Clerk: Is this admitted?

The Court: Yes. Give it a number.

The Clerk: For identification, or in evidence?

The Court: No, it is admitted as illustrative of the opinion of Mr. Mattingly.

Mr. Fulwider: That will be to illustrate the testimony he is about to give.

The Court: Yes. [154]

(Testimony of Harold W. Mattingly)

The Clerk: Exhibit B.

[Note: Defendant's Exhibit B will be found in the Book of Exhibits at page 371.]

Q. By Mr. Fulwider: Using Exhibit B, and such other papers as you may need, will you proceed with the discussion of the Gibbs circuit. You got to the point where relay R was mentioned, and you were just about to mention the armature R'. Would you take the circuit, starting with the switch S and relay R', and go from there?

A. May I use the copy that you have? I find the copy I have does not have coloring on it. The circuit which is energized by the closing of the switch S starts back at the main switch 68, shown on the left-hand side of the lower part of Exhibit B, and extends, by way of conductor 59 to the unit, and from there by way of conductor 81, through the terminal 79, and thence by way of conductor 78, and through the normally closed contacts of the relay R2, and thence by way of conductor 86 to almost to the top of the left-hand side of the wiring diagram, where it branches, and conductor 101 extends to switch S1.

Q. What color have you used?

A. I have colored this portion of this wiring diagram I have just traced with the color brown, so by following the brown conductors the circuit may be traced at the switch S.

The Court: It is hard to distinguish your brown from your red. I can see the distinction.

A. It is difficult. The circuit at Switch S branches.  
[155] One branch goes directly through the annun-

(Testimony of Harold W. Mattingly)

ciator and the other branch goes through the coil relay R by the joining at the end of conductor 101. That circuit continues by way of conductor 106, at the right-hand side of the diagram; thence downwardly to the terminal 107; from there the circuit extends by way of conductor 108 to the opposite side of the power line, which is conductor 61; thence back to the transformer.

Q. That is the circuit that goes through the lamp and solenoid and the relay R? A. That is correct.

Q. So when the ball drops through the pocket 1, then the switch S1 operates on this circuit you have just described? A. That is right.

Q. Then what happens with respect to the armature R'?

A. The armature R' is drawn downwardly into contact with these little squares immediately below the bar, which has the reference character R', and when that happens the contacts on the armature are closed, to complete or partially complete a series of additional circuits.

The first of the circuits which will be closed will be through the contact 113, and contacts 112, and 112'. Those are in the self-holding circuits for maintaining relay R energized, to keep that relay from letting go of [156] its armature until the main circuit is opened at the end of the game.

After all contacts No. 99 on the armature R' closes to partially complete a circuit for the winning combination, it closes one of the five gaps in the complete circuit for the winning combination, so that when the remaining four lights and relays in that particular combination have been operated the winning combination circuit is then completed.

(Testimony of Harold W. Mattingly)

I have illustrated the horizontal row combination, and traced the circuit for that in red crayon. And that circuit extends from one side of the power line 59 in the same manner as I traced it up to switch S. Then it continues by way of conductor 87, and through contacts 99 on relay R'.

The circuit goes in a series of relays through the several gaps in the circuit closed by the five armatures in the top row. Then the circuit continues by way of conductor 96 to the coil of the relay R3 at the bottom of the diagram.

Q. I believe that is 98, is it? I think you said 96. You meant 98?

A. 98, yes. That conductor should be 98. The circuit continues from the coil at the relay R3 up to and over the armature of the relay R3; then down by way of conductor 114 to conductor 161, which is the opposite side of the power line.

That causes the energization of the relay R3, and [157] signifies that a winning combination has been completed.

The vertical row combination I have traced in blue crayon, and by tracing those circuits out it will be apparent that if all of the lamps and relays for the vertical row had been energized the same type of winning circuit leading to the relay R3 will be completed, and cause the operation of relay R3 to signify a win.

In yellow I have traced the circuits that were completed by the diagonal row leading from the upper left-hand corner to the lower right-hand corner, and that circuit ends up on the same red conductor I have traced to energize relay R3.

When relay R3 is energized—that is referred to in the patent, I believe, as the holding relay,—it draws the ar-

(Testimony of Harold W. Mattingly)

mature R5 down in contact with all of the contacts shown immediately beneath it, and in so doing it completes a number of circuits. The first of the circuits which will be completed will be to apply the current from the conductor 59 to the green circuit, which I have traced, by way of the contacts 121 and 122, to the armature R5; then the circuit extends through that center line, and extends downwardly from the conductor 122 to its junction with the horizontal conductor 117.

At that position the circuit branches. One branch goes through the operating coil of the relay R2, and back to [158] the other side of the line by way of conductor 108, and 61. The other branch extends to the right and down through another terminal on the terminal board, and thence by way of conductor 117 to conductor 60 at the bottom of the sheet, that conductor 60 extending to and being connected to all of the units in the entire game.

When that latter circuit is completed, the current from the conductor 59 is applied to the conductor 60, and causes the bell 69 to ring. At the same time, the current flowing in conductor 60 will also flow through and operate all of the relays R2 in all of the remaining games in the complete combination.

The relay R2, when it is energized in the machine which makes the winning combination, opens its normally closed contacts 82 and 82', which, as you will recall, were in the main power circuit leading to all of the switches S, and to all of the relays R, and all of the annunciator lights, 1 to 25. So when the relay R2 is energized and opens contacts it breaks that energizing circuit on all of the signal lights, and all of the relays would be de-energized if it were not that the relay R3, when it had operated

(Testimony of Harold W. Mattingly)

complete a branch or shunt circuit which extends to relay R, so as it operates, the relay R3 energizes the feeder relay R2, and energizes the feeder relay R2 in all of the other machines, and also completes a branch to any substitute [159] circuits for keeping all of the lights on the winning board lit, until the time comes to start a new game, or play. The way in which a new play is started—

I would like to go back a little bit. The same circuit which energizes the relay R3 also extends to the top light L on the winning unit board, so the winning light on that board indicates that that is the board which has completed the winning combination.

After the bell has rung, and the feeder relays in all the other units have been energized, the energizing of the feeder relays in other units disconnects, by their normally closed contacts 82, all of the lights, and all of the relay coils which had been energized on each of those boards, with the result that all of their lights go out, and only the lights on the winning board remain illuminated.

Q. By the Court: You started to say how you started over the game.

A. The start of the game is by opening the switch 68 by the operator of the games.

(Whereupon, a recess was had until 10:00 o'clock a. m., Thursday, February 20, 1947.) [160]

Los Angeles, California, Thursday, February 20, 1947, 10:00 A. M.

The Clerk: No. 5566, in the case of Gibbs versus Faulkner. Further trial.

Mr. Fulwider: If your Honor please, may we call a witness out of order? We have Mr. Porter here, who was



mentioned in Mr. Gibbs' testimony. He is a busy business man, and if possible we would like to call him now so that he can get away.

The Court: I have no objection to calling a witness out of order when he is on your side of the case. The only thing I object to is calling a person out of order on the other side. Mr. Matingly, is going to testify for some time. I will allow you to bring Mr. Porter on now.

Mr. Fulwider: Thank you.

DON PORTER,

called as witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

A. Don Porter.

Direct Examination

By Mr. Fulwider:

Q. Mr. Porter, are you acquainted with Mr. John T. Gibbs? [164]

A. Yes, I am.

Q. Do you know whether or not that John T. Gibbs that you know ever was interested in the manufacture of amusement devices sold, I believe, under the name "Fascination"?

A. Yes, I do.

Q. When did you, approximately, as nearly as you can recollect, first meet Mr. Gibbs?

A. A matter of years. 1930, I would say, or thereabouts. I believe it was 1930.

Q. Where were you working at that time?

A. Graybar Electric Company.

Q. How long were you employed by Graybar?

A. 14 years.

(Testimony of Don Porter)

Q. What was your position with Graybar in 1930, when you met Mr. Gibbs?

A. I was manager of the power apparatus department.

Q. Are you an engineer? A. I am.

Q. In what?

A. I have a bachelor's degree in electrical engineering.

Q. Did you have a conversation with Mr. Gibbs when you first met him? I assume you did. A. I did.

Q. Was there anyone ~~present~~, do you recall?

A. Mr. Gibbs and myself. [165]

Q. Where was that?

A. At the office of the Gibbs Electric Company.

Q. Will you, the best you can, give us the gist of that conversation; what Mr. Graybar said to you, and what you said to him, in the order of events?

Mr. Huebner: Your Honor, I object to that as irrelevant and immaterial. Presumably it is directed to the defense that Mr. Cannon was a joint inventor, but unless and until Mr. Cannon has appeared here and answered to the direct question, and claims to be a joint inventor, I think this is out of order.

The Court: I think it goes to contradict, I assume, Mr. Gibbs, in his statement as to the conversation he had. I presume you want to offer the witness to contradict what he testified to. I presume he knows, because he would not be called to contradict him, if you did not know what the man is going to testify to, but it is directed to the conversation as to who sat in. I will say this much: Mr. Gibbs testified he went to Graybar, and Graybar told him they were not doing specialties, and they recommended Mr. Cannon to construct it. It may be contradiction

(Testimony of Don Porter)

of a not very consequential matter. I will overrule the objection.

Mr. Fulwider: You may proceed. Do you want the question again?

The Witness: If you please. [166]

Q. Will you read the question, Mr. Reporter?

(Question read by the reporter.)

A. Mr. Gibbs came in and inquired if we had for sale a certain type of relay, which he thought should be used in the circuits of this machine.

Q. What machine was that? What did he have in mind building? What did he tell you he had in mind building?

A. I don't know that the name was mentioned. I understood it to be a game, a common game at that time, an electrified game of what we would call Bingo or Tango. It had several other names.

Q. Do you recall whether or not he had any sketches, or made any sketches for you as to how the game was going to appear? A. I don't remember.

Q. What did he tell you about how that game was going to be built?

A. He had in mind a series of holes in a table where balls were dropped through those holes, and the machine was automatically to announce a winner, which consisted of five balls dropped through five holes in a direction vertical, horizontal, or diagonal.

Q. What did he tell you as to how he expected to accomplish this, or the purpose of this game?

A. I don't think he told me how he intended to accomplish it. [167]

(Testimony of Don Porter)

Q. In the course of your activities for Graybar, at that time was it part of your activities for you to give advice to prospective purchasers of equipment?

A. That is true.

Q. As a result of this conversation did you perform any services for Mr. Gibbs, make any drawings, or wiring diagrams, or give him any advice?

Mr. Haebrier: Your Honor, I would object to that upon the ground that Mr. Porter is not claimed to be a joint inventor.

The Court: They will probably get to the man in the moon after while.

Mr. Fulwider: I might say—

The Court: I am not interested in what you are going to say. I want facts; not arguments. Maybe this gentleman is going to claim he was the inventor. Let us find out. Maybe some 16 years after a person has an invention, and no interference has been given, then all of a sudden a new lawyer discovers something. It is not pleaded. The only pleading is as to Cannon as the inventor.

The Witness: Can I have the question again?

(Question read by the reporter.)

A. Yes, I did.

Q. By Mr. Fulwider: Will you state what services you [168] performed for Mr. Gibbs?

A. I made a wiring diagram of one single unit of the game.

Q. How complete was the diagram?

A. I would say it would do the job satisfactorily.

Q. Was the layout of that diagram your own design?

A. It was the application of standard relays to what was to be accomplished, yes.

(Testimony of Don Porter)

Q. Did Mr. Gibbs give you any technical assistance in laying out those circuits? A. No, he did not.

The Court: How much did you charge him for doing the work?

A. I did not charge him. He paid me \$20.00.

Q. In other words, a part of your job was to give advice of this character? A. That's right.

Q. You couldn't charge for the company, and he gave you a gratuity of \$20.00? A. That's right.

Q. You did not feel that you had invented it, because anyone skilled in electricity could have made the layout, provided he was told what was to be accomplished, is that correct? A. That is correct. [169]

Q. By Mr. Fulwider: I would like, just to tie in the testimony, your Honor, to show the witness a copy of the Gibbs patent.

I show you Fig. 6 of the Gibbs patent in suit. Does that diagram look familiar to you?

A. Essentially, it looks something like the diagram I made.

Q. It has a similarity to that diagram?

A. That is true.

Q. Did you employ a separate relay for each of the lamps? A. Yes, we did.

Q. Do you recall whether or not you had a relay in the win sockets which lit up a signal lamp for that particular unit? A. We did.

Q. Do you recall whether or not you had a lock-out relay which locked out the other units when a win was accomplished on one of the units?

A. I don't remember that.

(Testimony of Don Porter)

Q. I call your attention to Fig. 1 of the patent. Does that portray, to the best of your recollection a general illustration of the game about which Mr. Gibbs spoke to you? A. It does.

Q. Did you ever see subsequently a game built which [170] was generally familiar to Fig. 1 of the patent?

A. Yes.

Q. Where was that? A. Long Beach, I believe.

Q. Do you know what it was called, the name of the game?

A. Fascination, I believe was the name of the game.

Q. Do you remember what you did with the drawings or wiring diagram, rather, that you made for Mr. Gibbs at that time?

A. As I remember, I left that with Mr. Cannon.

Q. You had a conversation with Mr. Cannon, I presume, about the game? A. That's right.

Q. Can you tell us in substance what the conversation was?

Mr. Huebner: That is hearsay, your Honor.

The Court: The objection will be sustained.

Q. By Mr. Fulwider: Can you tell me what you said to Mr. Cannon?

Mr. Huebner: I object to that as hearsay.

The Court: Objection sustained, It is purely hearsay.

Mr. Fulwider: Perhaps I am in error in this, your Honor, but it seems to me as a part of the transaction this man stated he did have a conversation with Cannon pursuant to these drawings. [171]

The Court: Unless he was appointed by Gibbs as his agent to communicate something to Cannon, what he said to Cannon, and what Cannon said to him is immaterial.



(Testimony of Don Porter)

This man was not even an agent in any respect. He was just an employee. He was supposed to give that kind of advice.

Q. By Mr. Fulwider: Did you have any further conversations with Mr. Gibbs relative to the wiring diagrams that you made for him? A. Not as I recall.

Q. Other than the time, when he paid you for it?

A. That is right.

Q. I believe you answered, in substance, this question, in response to a question of His Honor's: Was it your thought that you had invented anything when you made this wiring diagram for Mr. Gibbs? A. No.

The Court: You never conceived ideas of any electrically controlled bingo game? A. I did not.

Q. If I came to you and told you I wanted a certain electrical apparatus in my house,—say, for instance, I wanted a place, if I would go to my library in the living room, I could push a button, and it could be seen on the second floor of my building, you would apply your electrical skill to devise by ordinary methods the means to accomplish it? [172] A. That is correct.

Q. So you did not know the bingo game?

A. That's right.

Q. He said he had an idea, and he wanted an electrical apparatus to perform the idea, and you did the work he could have got from anybody else electrically skilled?

A. That's right.

Q. The idea he had in mind was his?

A. That's right.

(Testimony of Don Porter)

Mr. Fulwider:

Q. In 1930, when Mr. Gibbs came to see you were you then familiar with Bingo or Tango games as they were then played in concession places?

A. Yes. Not electrical.

Q. Can you tell us briefly how Bingo games were played, those with which you are familiar?

A. It was a board with a circuit which had a basket, with a number of squares. You threw the ball into the basket, and if it landed in a certain position, it formed a line in one direction or another.

Q. Were there separate pockets in the container in which you threw the ball? A. Yes.

Q. Each player got his turn to throw the ball?

A. As I remember, yes.

Q. Each player had a card on which he put beans? [173] A. Yes, as I recall.

Mr. Fulwider: That is all.

Mr. Huebner: No questions.

Mr. Fulwider: We will call Mr. Mattingly. I would like to offer in evidence at this time as defendant's next Exhibit C, the file wrapper, certified copy of file wrapper of the patent in suit.

The Court: All right.

The Clerk: Defendant's Exhibit C in evidence.

Mr. Fulwider: As defendant's D in evidence I would like to offer a book of the prior art patents. It does not include all of the patents pleaded, but most of them. Two of them are included only that are file wrapper references.

The Court: There is one warning, and that is I am not going to sit here for two or three days to listen to an advocate explain these patents. You know my views. You have read my article.

Mr. Fulwider: Yes.

The Court: There is only one kind of authority I will accept, to substitute for my own judgment, and that is an expert in field, and a patent attorney is going to be limited to what he actually knows, and is not going to tell me indirectly what is this and what is that.

Your own association in 1930 invited me to give a lecture, which I gave, and it was printed in both the American Bar Journal and the Patent Quarterly. At that time I ex- [174] pressed my views as to the kind of experts I would listen to, and the fact that I am not going to listen very long to patent attorneys, who hold themselves out to tell me how to decide a case.

I will listen to a technician. I will listen to an engineer upon those matters, but as to a patent attorney, who is a mere partisan, I will use my own views, just as the law permits me to, to read the patent, and to interpret it.

As a matter of fact, you, standing there, can explain as well as Mr. Mattingly. I want to limit this. He is not going to go on, as he started yesterday, and talk and talk and talk, and I am not required to listen to him, because he is a patent attorney, a partisan, and not a scien-

tist in the field, being employed to read certain things and say what a certain thing does. He does that very successfully. This is no reflection on Mr. Mattingly. I have expressed this to every lawyer who comes here, from New York to San Diego, and he knows that article, because I started from the beginning to abolish the evil set up,—the reading of a lot of stuff that I myself can understand and read as well as he, with the little experience he has;—not this expert, but other experts. They set themselves up in every case as an authority on everything. I will listen to him within limits. Those are the limits laid down by law.

An expert opinion is valueless unless the man has specific knowledge, and I can disregard them all, if I can by reading the patent and drawings interpret them myself. When it is some very abstruse science that is different. I am not a scientist, but I have the privilege of having a son, a great scientist, a boy 22, who got his Ph.D. at Berkeley, so there must be something in the background in my ability to read them. But with a patent attorney, or a patent expert, testifying for one side or the other, I am not going to listen to him.

Mr. Fulwider: I agree, your Honor. I might say we are going to confine the testimony very strictly—

The Court: You have a man who has only a high school degree, and is not much of an electrician.

Mr. Fulwider: I believe he has a college degree.

The Court: He got a high school degree in electricity, and a law degree at college. Why don't you get a Caltech man,—the type of man we usually employ? As a matter of fact, we don't need any expert. This is a simple thing. He can explain it. I will listen to him, but I give you

warning that I am not going to sit here and listen to him testify as he did yesterday, and go over 50 patents, and tell me what they mean. That would apply to you, as well as to him.

Mr. Fulwider: My thought always has been that the main purpose of an expert in a patent case is merely to expedite the trial. [176]

The Court: They don't expedite the trial. With 90 per cent of patent experts it is a waste of time and a waste of money, because they try to tell the judge indirectly how to try the case. The Supreme Court says you can't do that. You can't do it, unless it is actually a thing which requires a specific scientific knowledge, and when a man employs a patent attorney for the purpose of telling the judge in advance, not as a scientist, he employs a man who is a partisan. I give warning that I am not going to listen to any lengthy exposition of prior art. I know just as much about it as he does, although I don't know electricity. I thought I would stop the practice.

Mr. Fulwider: I offer this patent book.

The Court: That is an exhibit giving a list of the patents?

The Clerk: Defendant's D in evidence.

[Note: Defendant's Exhibit D will be found in the Book of Exhibits at page 373.]

Mr. Fulwider: I may be in error in this, but I think we should clear it up. Mr. Mattingly, just what electrical experience have you had?

The Court: He has given his experience. He is not going to give any more. I just wanted to warn you. You have heard the case where the patent lawyer got the expert to read 300 prior patents. The judge said: Read

(Testimony of Harold W. Mattingly)

them into the record. He got off the bench, and was gone three days. That is the practice you gentlemen have established, and I mean to [177] scotch it.

Mr. Fulwider: I agree very much.

Q. I believe, Mr. Mattingly, at the close of the testimony yesterday you had completed your summarization of the disclosure of the Gibbs patent. Will you compare the structure of the Gibbs patent with the structure of the old Fawn game, showing similarities and dissimilarities, particularly with reference to the Gibbs structure as it is defined in Claim 3?

The Court: Wasn't Claim 3 skipped?

Mr. Fulwider: No.

My Huebner: We charge Claim 3 to be infringed.

Mr. Fulwider: Claim 3, your Honor, I believe is the broadest claim pertaining to a single unit.

The Court: Yes. I have my copy. I have marked it.

A. The old Fawn game consisted of a number of units which were interconnected in such fashion that individual players on each of the units would be able to play ball over a playing field, and a ball would drop into one after another of the holes in the game board.

In so doing it would close a switch underneath a particular hole, and establish an electrical circuit to one of the lights, or to the annunciator, backboard. When the annunciator lights in a horizontal, vertical, or diagonal row had been completed a combination would be set up mechanically which would [178] allow the mechanical actuation of what I call the win switch, a mercoïd switch, which is illustrated on Figure 9 of the description which is on



(Testimony of Harold W. Mattingly)

file here. The closing of the win switches would energize a winning relay.

Q. I wonder at this stage if it would not be wise to put in a physical exhibit. Would that facilitate your description? A. That would.

Mr. Fulwider: I would like to offer at this time, your Honor, as next Exhibit E, I believe, one of the mechanical electrical units which was taken out of a Fawn game. This portion of the Fawn game I believe is the same in both the old and new, isn't it, Mr. Mattingly?

A. That is correct.

Q. This is an operable operating part? A. Yes.

Mr. Fulwider: May I offer that?

The Clerk: Is this admitted?

Mr. Fulwider: No objection, Mr. Huebner?

Mr. Huebner: No objection on your representation that that has not been altered, and was taken out of an operating machine.

Mr. Fulwider: That is correct. Isn't that correct, Mr. Hatherell?

Mr. Hatherell: It has been in a machine, and has not been altered since. [179]

The Court: Is this the original game, or new game?

Mr. Fulwider: That is part of the mechanism common to both games, your Honor.

The Witness: Defendant's Exhibit E is the mechanical mechanism which allows the making of winning combinations as the balls are passed through the various apertures on the board.

(Testimony of Harold W. Mattingly)

The holes in the board are arranged in two transverse rows, rather than in rows of five's, each extending vertically, horizontally and diagonally, and in each one of those holes there is the operating lever, or I believe it has been called a paddle.

Q. May I interrupt a moment? Plaintiff's Exhibit 2 has photographs, some of which are of this mechanism?

A. Some of them are.

Q. Would you like perhaps to follow it?

The Court: I have one.

Mr. Fulwider: You have a duplicate set?

The Court: Yes.

A. The operation of the ball passing through one of the holes is to depress one of these paddles, and when it is depressed it remains in the depressed position.

At the rear of this mechanism there is a series of little wheels, each one of which has a pin that extends upwardly, and normally engages behind the rear end of the little paddles. [180] so that when the paddle is depressed that pin is released, then, as additional plays are made of the board, a ball passes through additional holes to make a winning combination, which we will assume in this case would be the top horizontal row of lights. The others of the paddles corresponding in that combination would be depressed, and at the depression of the fifth one of those paddles, the last of the five paddles necessary to make that winning combination, would be released, and that would allow a U-shaped lever, which up to that time has been prevented from moving forward—it will allow that lever to be moved forward, and move the winning bar, which extends all the way across the machine, and as a result

(Testimony of Harold W. Mattingly)

of any winning combination that win bar is moved forward, and it closes the mercury switch which is fastened to the end of that bar. When that mercury switch is operated that closes the circuit to the relay which is indicated at 98 on Figure 9, and that relay closes a circuit through the switch blade 109, and energizes a relay 106, and that in turn operates the main power switch 110 to cut off electric power to all of the machines.

However, the switch 84, which is operated by the same relay 98, transfers the power circuit which had gone into the win machine from conductor 78 to another conductor 101.

Q. You are now referring to Figure 9?

A. I am referring to Figure 9. [181]

Q. Of Plaintiff's Exhibit, I believe—which number is that? [182]

The Witness: It is Plaintiff's Exhibit No. 2. The conductor "101" connects with the power circuit behind the main switch "110" so that even though the power line "78" has been disconnected by the main switch, the auxiliary power line "78" will supply current to the winning machine.

The manner in which the wheels, pins and bars operate to set up the winning combination is a little difficult to see from the model, and I have prepared a schematic drawing which I believe helps in the understanding of the operation of the part of the machine.

Mr. Fulwider: Do you have an extra copy of that one for Mr. Huebner?

The Witness: Yes.

(Testimony of Harold W. Mattingly)

Mr. Fulwider: I should like to offer this in evidence as our next exhibit to illustrate the testimony of the witness.

The Court: All right.

The Clerk: Defendant's Exhibit F in evidence.

[Note: Defendant's Exhibit F will be found in the Book of Exhibits at page 527.]

The Witness: May I have your copy, Mr. Fulwider?

At the top of this sheet of drawings I have illustrated the position of the various parts prior to the operation of any of the paddles, that is, the position that these parts would be in at the beginning of the play of the machine.

The paddles I have indicated and colored yellow, the rear ends of which act as stops against which the red pins [183] of the red wheels, that is the pins which extend vertically, will bear against the rear ends of these yellow paddles and as long as these pins bear against the ends of those paddles the wheels cannot be moved, rotated, in the clock-wise direction.

Extending across in front of all of the pins, all of the vertical red pins on the wheels, is what I call the "win bar" which I have colored green. That extends across the entire groups of wheels and pins. And the lower end of that win bar carries the little glass-enclosed mercury switch which I have referred to as the win switch.

As the paddles are moved by the ball passing down through the apertures, the paddles will assume the position I have shown in the lower figure of this drawing where it will be seen that the rear ends of the first five of the

(Testimony of Harold W. Mattingly)

paddles have released the vertical pins. That permits the horizontal win bar, which I have colored blue, to be pulled forwardly by its spring, and as it is pulled forwardly it engages the vertical red pins, carries all of the first five of the wheels forward and into engagement with the win bar, the green win bar, and moves the green win bar forwardly far enough to close the circuit in the mercury switch.

The manner of obtaining a vertical combination is illustrated by the win bar which I colored brown, and that extends across the machine to engage the pins on those wheels that [184] are associated with the vertical line of lights so that when the paddles for the vertical line of lights have released their vertical pins, then the brown bar will swing forward; and in doing so, it will move the vertical pins of the wheels into engagement with the green win bar, swinging that forward and in that way close the win circuit.

The purple bar, which I have illustrated, is the diagonal win bar; and that extends across all of the wheels and engages pins that will be on those wheels that are associated with the diagonal line of lights so that when those wheels are released by the operation of the correct paddles, the purple win bar will swing forward and in that way move the main win bar and close the win circuit.

The Court: How much control over the movement of the ball does the player have when he pushes the lever?

The Witness: He has very little control over it. He has control only to the extent of the speed with which the ball will pass out on the playing field.

The Court: Depending on the pressure he applies to it?

(Testimony of Harold W. Mattingly)

The Witness: Depending on how far he pulls back the plunger against the spring. The ball is projected by means of a little plunger which is normally spring-urged forward; and you pull that back against the force of the spring, then let it go and it impacts the ball, driving the ball forwardly over the game board. [185]

The Court: But he does not have any control over the direction as, for instance, the man who plays billiards can direct through the cue the direction of the ball?

The Witness: That is right. In this type of game there is no manner in which you can control the direction in which the ball is going. It follows a definite straight path up one side of the machine, then hits a curve at the upper end of the board and passes around that curve and then bounces back and forth over the—

The Court: So where it lands is purely fortuitous?

The Witness: I don't get that.

The Court: Where it lands, the hole in which it gets on its way back, is purely fortuitous?

The Witness: To a great extent. There is a little skill that can be worked to make the ball drop into holes at one side of the board or in the middle or over on the other side of the board.

The Court: I see.

The Witness: But exactly which hole it is going to fall into is strictly a matter of luck.

The Court: All right.

The Witness: Well, now, the original Fawn game had this combination of mechanical devices for setting up the winning combination. And when the winning combination was set up, the circuit that was closed by the win switch operated [186] a relay to open the power circuit



(Testimony of Harold W. Mattingly)

which had fed all of the machines and established a transfer, what we call a transfer circuit, to maintain current in winning machine and keep the lights in the winning machine operating.

That original Fawn game also had a signal light "22" which was mounted on top of the annunciator board, and the circuit would be completed by the operation of the relay "98" to light that light to indicate to everybody that that was the particular winning board.

To compare that with the Gibbs patent, the Gibbs patent has the annunciator board with the lights connected to switches on the game board so as to be operated by the passage of the ball through the holes and in that sense the two games are alike.

There is one difference which is that in the Gibbs game the arrangement of the holes on the board is identical with the geometrical arrangement of the lights on the annunciator panel.

By referring to Claim 3 of the Gibbs patent, the claim defines or requires a game board, which is the game board "C" of the Gibbs patent and is the game board shown in the photographs in Plaintiff's Exhibit 2.

The next element is "a plurality of contact devices thereon."

Those are the switches "S" in the Gibbs patent, and [187] those can be compared with the contacts: I believe they are referred to as "58" in the photographs in Exhibit 2.

Those are referred to as "52", I believe, in Exhibit 2.

Mr. Fulwider: I think the switches were "58", and the wires going up on it are "58-prime." At least, that is the way they are marked in that wiring diagram Fig. 9.

(Testimony of Harold W. Mattingly)

The Witness: I was wrong on the "52". The switches are identified by the number "58".

The claim continues that the switch contact devices are adapted to be engaged by an object moved over the board by a player. That, of course, is the ball "B" in the Gibbs game; and there is a ball, of course, corresponding to that in the old Fawn game.

The next element is the plurality of indicators. That is the lamps on the annunciator panel numbered 1 to 25 in the Gibbs patent; and there are 25 lights in the annunciator panel in the old Fawn game.

The next element is "means for electrically connecting said indicators with a source of electric current and with the contact devices."

Those, of course, are the circuits that lead from the transformer in the Fawn game to the switches and to the lights; and the same is true of the Gibbs patent.

Those are the circuits that lead from the power transformer to the switches and to the lights. [188]

The next element is "said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups."

The indicators and the contact devices in the Gibbs game not only correspond in number and are divided in groups, but they also correspond in their arrangement, the arrangement of the holes on the board being the same geometrical arrangement as the lights on the annunciator panel.

In the old Fawn game the arrangement of the apertures in the game board, as I pointed out, constitute two horizontal rows in which all 25 of the apertures are in these

(Testimony of Harold W. Mattingly)

two rows; so that the apertures or holes and contact devices do not correspond in arrangement with the arrangement of the annunciator lights on the panel.

The next element is a "means for energizing said indicators as the associated contact devices are operated."

In the Gibbs patent the only element which can be found which satisfies that element of Claim 3 is the relay "R", one of which is associated with each of the annunciator lights and operates to energize and maintain energized the annunciator light.

In the old Fawn game there is no element which corresponds to that, that last element. The switch, which is the contact device recited in the earlier part of Claim 3, remains closed. [189]

There is no additional energizing mechanism employed.

The next element of the claim is "an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized."

That in the Gibbs patent is the circuit which includes the conductor "98", the coil of the relay in the Gibbs patent and also includes in series the contacts of those relays which are required to make up a winning combination.

In the old Fawn game there are no contacts or no circuits which are in series relation with the annunciator lights or with the switches which control the annunciator lights. Instead there is a mechanical device which, when the winning combination is established, closes an entirely separate circuit which includes the mercoïd switch indicated at "M" and the relay coil "98" whenever a winning play is made.

(Testimony of Harold W. Mattingly)

The next element of the claim is "and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

In the Gibbs patent it refers to the win lamp "L" which is the lamp at the top of the annunciator panel shown in that patent.

The supplementary means for indicating a winning play in the old Fawn game is the win light which has been indicated in Plaintiff's Exhibit 2 as the lights "22".

Q. By Mr. Fulwider: There is nothing in that claim, [190] is there, Mr. Mattingly, pertaining to a bank of game units or the inter-connection between units?

A. No. Claim 3 defines only a single game or a single unit without defining any inter-connection with other games.

The Court: But you have to read that along with the others to see what they are driving at. Each claim must show a distinct feature. Each claim shows one distinct feature. You have to combine them all to see what they are getting at.

The Witness: That would be true, except that Claim 3, your Honor, is what we would refer to as a sub-combination claim. It is a claim which covers a particular part of the larger combination.

The Court: That is right. If you filed an application, you would not put all your eggs in one basket in one claim. You would lift them up so as to pile them up, and the next one has one more until you have a complete whole; and the last one usually combines them all.

The Witness: That is right.

The Court: Is that not the way you patent attorneys write claims?

(Testimony of Harold W. Mattingly)

The Witness: That's right.

Q. By Mr. Fulwider: Will you compare the complete structure with reference to Claim 6 as a summary of the complete structure, having several units in bank? [191]

A. Claim 6 is a claim to the complete combination or I can refer to it as the competitive game combination where there are a number of separate units connecting together in such fashion that the various players can compete with each other.

In Claim 6 the first element is the plurality of units electrically connected together.

Those, of course, are the units which are referred to in the Gibbs patent as "U<sup>1</sup>," "U<sup>2</sup>," and so forth; and each of those units constitutes the game or the single game which is described in Claim 3. The claim continues "each of said units including a plurality of contact devices."

Those are the switches "S". And the claim continues "a plurality of indicators."

Those are the lamps 1 to 25.

The claim continues "corresponding in number and subdivided into corresponding groups."

The switches "S" and the lights Fig. 1 to 25, of course, correspond in number in the Gibbs patent and correspond also in their arrangement and the division of the lamps into the various winning combination groups.

In the old Fawn claim there was a plurality of separate units which were electrically connected together, and each of those units had an annunciator panel with its lights and it also had the game board with the plurality of contact devices [192] connected to the lamps.

(Testimony of Harold W. Mattingly)

The primary difference up to that time is that the arrangement of the holes in the game board in the old Fawn game does not correspond with the arrangement of the lights on the Fawn annunciator panel.

The next is "means for electrically connecting the contact devices with the corresponding indicators."

Those are the circuits in the Gibbs patent which connect the switches "S" with the relays "R" and the lamps 1 to 25.

In the Fawn patent the electrical circuits which extend from the switches, closed by the paddles to the annunciator lights on the panel, would correspond to that element.

The claim continues "means for electrically connecting said units together and with a source of electric current."

Those in the Gibbs patent are the wires "59" and "61" which extend to all of the Gibbs units and connect each of those units with the source of power which is the transformer "68."

In the Fawn game the means for electrically connecting the units together would be the conductors "77," "78," "77-prime" and "78-prime" which extend across and connect to all of the units.

The next is "said indicator adapted to be operated when and as objects are moved by the players into engagement with the contact devices." [193]

That is true in the Gibbs patent that the indicators, of course, were adapted to be operated whenever the ball passes through an aperture. It is also true in the old Fawn game that the switches will be closed and will light the corresponding lights.

The claim continues "and means whereby when all of the indicators in any group of any one of said units have



(Testimony of Harold W. Mattingly)

been operated to complete a winning play, the indicators on all of the units except the winning unit will be de-energized."

That, in the Gibbs patent, is the result of the energizing of the feed relays "R-2" for all the other non-winning units as a result of the operation of the relay "R-3" on the winning unit.

The operation of the relay "R-3" on the winning unit, it will be recalled, applies current to the conductor "60" and that extends to all of the Gibbs units and causes energization of all of the feed relays "R-2", and all of those non-winning units, and causes them to break the power circuit leading to their lights and switches.

In the old Fawn game the completing of a winning play, releasing the win bar, and allowing the win switch "M" to be closed, energizing the relay "98", closes its switch "109", energizing that control relay "106" which controls the main power source or main power feed to all of the units disconnecting that main power feed wire which is "78" on [194] Fig. 9 of Exhibit 2 and, thus, de-energizing the indicators on all of the non-winning units.

Q. By Mr. Fulwider: I wonder if you would now point to the dissimilarities or the further dissimilarities between the Gibbs patent and the new Fawn game? I don't believe it will be necessary to repeat common matter, just pointing out the differences in effect between it and Gibbs and with reference particularly to Claims 3 and 6, I think, to correlate the description.

A. The primary difference between the old Fawn and the new Fawn game is that in the old Fawn game, as in the Gibbs patent, the attainment of a winning combination

(Testimony of Harold W. Mattingly)

on any unit automatically caused the stopping of the play of all of the games in the set.

The Court: What has that to do with the main idea of the patent? Is that a minor, side consideration? You have to compare these in the broader terms of identity of aim, identity of function and identity of operation or dissimilarity of aim and operation.

The Witness: That is correct, and—

The Court: Is that not as though you had simply eliminated something that is immaterial in the game? Wherein does that change the game? Does the game, despite that, still aim to award a prize to a person who has achieved five balls in a row? [195]

The Witness: The aim of the game is to achieve that.

The Court: All three achieve it the same way, do they not?

The Witness: No, I don't see that they do.

The Court: Wherein is there a difference? You cannot substitute a manual for a mechanical, can you?

The Witness: I was merely pointing out that as the invention is defined in the claims of the Gibbs patent there is a distinction.

The Court: Well, that does not mean anything. You have to read the entire invention to achieve its aims. You know very well that you cannot drop one element and substitute something else and claim invention, do you not? At least you ought to know that much patent law.

The Witness: But you can omit the use of one element and thereby not infringe a claim which recites it.

The Court: You cannot merely, by eliminating one claim, one element in achieving the same results, claim a new combination.

(Testimony of Harold W. Mattingly)

The Witness: That is exactly what the new Fawn game does. It achieves a different result.

The Court: What is the different result? Wherein does he achieve a different aim?

The Witness: It achieves a different result in this: that the entire game is not stopped upon the completion of [196] the winning play.

The Court: But you stop it anyway. If you went on forever, you would never win anything.

That is where you show that you are a partisan, not an expert. You are rationalizing something out of your knowledge of patent law.

Mr. Fulwider: May I interject there, your Honor, that I think the fundamental difference—

The Court: I do not want him to argue as a lawyer. I asked that question because I know very well that he knows enough law to know what he is doing is to rationalize something which does not exist.

Mr. Fulwider: Well, the old game was—

The Court: I will let you argue the case. Get in the facts first. Both of you want to argue in advance.

You have forgotten. You have never tried a patent case before me, and I think Mr. Huebner has forgotten, because he has not been before me in four years.

I do not like trying this lawsuit in advance like you patent lawyers want to. In the opening statement you give all the law and all the facts. I do not like that.

Let us get some facts in here. I shall decide this very quickly as soon as I have the facts in.

What novelty has he achieved? Tell me this. What has he done except to take this and drop a few things

(Testimony of Harold W. Mattingly)

and have [197] exactly the same game? Wherein is the result achieved?

The Witness: The ultimate result which is achieved in the new Fawn game is this—

The Court: Wait a minute. Do you concede that the first Fawn game is a copy of Gibbs, or do you not?

The Witness: I do not.

The Court: You do not. I see. All right.

The Witness: I don't think that the first Fawn game is a copy of the Gibbs patent. That is, the subject matter which is claimed in the Gibbs patent.

The Court: In your idea what is the idea in the Gibbs patent? What is the underlying idea of the patent?

Get away from these petty things and get down to fundamentals, which is the basis on which these cases must be decided.

The Witness: The Gibbs patent in its claims particularly, for example Claim 3, distinguishes from what had been done in the earlier art primarily by the fact that it includes this holding relay.

The Court: But there is nothing in the prior art where a man had ever imitated a Bingo game where you have five little balls in a row. Of course, there is a lot in the prior art. You know very well that you cannot take one element from one thing and an element from another claim it existed before. [198]

The Supreme Court decided that nearly 100 years ago. You know that, do you not?

The Witness: But in the old art there were these ball games with closed switches to light the annunciator lights.

The Court: The object of this game is to allow a man to win when he has a row of five, introducing a card

(Testimony of Harold W. Mattingly)

game, taking an ordinary card game and transforming it onto an electrical game; and that is the essence of the invention.

The Witness: And that is, the essence of that, your Honor, is shown, in my opinion, in the Nakashima patent which is one of the prior art patents.

The Court: I am not interested in that. I will not even let you tell me about the Nakashima patent. I shall decide it myself.

What different result has he achieved other than the killing of the lights? Tell me that in simple language, not as a partisan but in general relations. Do not rationalize it.

The Witness: Do I understand you want to know what the difference is—

The Court: The result. What result does he achieve that is not in the Gibbs patent?

The Witness: The result he achieves is to permit the game to be played for a given time, with or without a possible win. [199]

The Court: Nevertheless, you limit the time, because if the time were unlimited and you would go on and on, the house would never win any money. You never paid them according to the number of players; is that not true?

The Witness: That is true.

The Court: That is true. Therefore, the result is inconsequential because you limit the time. And if the first man takes a minute and a half to achieve that result, you stop him anyway?

The Witness: On the other hand—

The Court: Wait a minute. Please answer the question. If you were not a lawyer, I would not ask you this



(Testimony of Harold W. Mattingly)

kind of question. But you are a lawyer, and I am going to ask you this kind of question to show you why I do not approve of the type of testimony that you are giving, you see, under the law.

So long as you are a lawyer, I am going to talk law to you.

The Witness: Okay.

The Court: All right. Not to show how much I know or how much you know, you see. That is a question to decide later on. Ultimately I have the say whether I know as much as you do or not, except that I have the advantage of having written at least 20 opinions which are standard and most of which have been affirmed by the Supreme Court, by the highest [200] court. In fact, I have the privilege in this District of having the only patent that has really been sustained by the Supreme Court, and that is *McCullough v. Kammerer Corporation* 39 Fed. Supp. 213. All the matter about which you talk is in all of these opinions. You know that.

The Witness: Well, that is a distinction to have a patent sustained by the Supreme Court.

To get back to the difference between the Gibbs game and the new Fawn, I think it is best illustrated by the fact that in the new Fawn game it is possible to have a number of persons win during that given time period.

The Court: When?

The Witness: During the time period set.

The Court: If the first player is very fast, that, of course, works against the house; and the house will see to it that it never works that way. Is that not a fact? Of course, I think these are all gyp games. I am giving you my candid opinion. In the realm of patents if we had



(Testimony of Harold W. Mattingly)

the principles that we have in the realm of copyright, that an immoral thing cannot be copyrighted, I would throw all these games out as not patentable because they are mainly gambling devices to get around the gambling laws. That is what I think about all these things. They are gyp games. The house always wins. Otherwise you would not run them.

The Witness: I was asked to make a percentage in order [201] to—

The Court: They always win, and anyone who invents an idea like that becomes a millionaire. He has a right to do that, but it is a gyp game; you know that. The house always wins.

The Witness: Yes, it has to.

The Court: You have five players. One man wins. How much do you pay him? How much do you pay him? Five times or ten times?

The Witness: I don't know the percentage. I think it is either five or ten times.

Mr. Huebner: Five times.

The Court: You pay him five times. The house makes 50 cents every time anybody wins. They could not let the game go on for any length of time because they might lose money instead of winning it.

The Witness: That is true.

The Court: All right.

The Witness: The other difference that I would like to point out is that where the time period expires without there being a winner, then the next play or during the next time period the odds which are paid to a winner who accomplishes the winning result in that next period are increased, so that the—

(Testimony of Harold W. Mattingly)

The Court: Because his chances of winning are so low and because you will time him at a minute and a half when [202] you stop him; is that not true?

The Witness: That is right.

The Court: Wherein is there any advantage? There is no advantage to the owner of the place in having the lights go out. The only advantage there would be to the player, and it disappears when you time the man. Is that not true?

The Witness: Well, if you didn't time him—

The Court: You would never win. That is why I say it is a gyp game either way.

The Witness: Well, you probably are right.

The Court: I have not even played it, but I used to declare them gambling devices when I was on the Superior Court, all of them.

All right, anything further?

Mr. Fulwider: I should like to ask this question. I am not sure it is within Mr. Mattingly's knowledge. If not, we will produce another witness.

Q. By Mr. Fulwider: Did you see the games played, the Fawn games? A. Yes.

Q. Did you notice whether or not there were several winners at a time in the games that you saw?

A. Yes. While I was at the place looking at the Fawn games—

The Court: You would hold that a disadvantage to the [203] inventor because you are working against the house. It is like a blackjack game where you are not the dealer. You cannot win.

Mr. Fulwider: I might say in this new Fawn game, your Honor, it is more a sweepstake proposition.

(Testimony of Harold W. Mattingly)

The Court: Let us not get away from the fundamentals. It is a low-grade of entertainment that gyps the people. If the man is entitled to anything, let us find out what these people claim they invented.

You know very well, of course, that these people went out and copied this thing; and the only deviation they made is either on a lawyer's advice or technician's advice as to how to get around it. Is that not a fact?

The Witness: The way to avoid the patent, yes.

The Court: That is right.

Mr. Fulwider: Did you answer that question?

The Court: Yes, he answered that.

I shall declare a recess. That is a good climax. I don't want to get to an anti-climax.

I will say this much: You can tell he is a lawyer because he would not give a dishonest intellectual opinion. That is what makes the strength and weakness of witnesses like that.

(Brief recess.) [204]

Q. Mr. Mattingly, have you prepared any documents which are illustrative of the Gibbs game and of the prior art?

A. I have. I prepared a diagram, a simplified diagram of the circuits shown in the Gibbs patent, illustrative of the manner in which the Gibbs circuits operate to play the game, and to control the other units in the game.

Q. You are familiar, of course, with the prior art pleaded in the case? A. I am.

Mr. Fulwider: I will offer in evidence, your Honor, as our G, this diagram, which is a simplified diagram prepared by Mr. Mattingly of the Gibbs patent in suit.

(Testimony of Harold W. Mattingly)

I hand counsel a copy. That is merely for the purpose of illustrating the testimony which has already been given.

The Court: It may be received.

The Clerk: Defendant's G in evidence.

[Note: Defendant's Exhibit G will be found in the Book of Exhibits at page 529.]

The Witness: I have also prepared a simplified diagram of the Chester No. 1,598,711.

Q. And Chester is one of the patents included in the book of patents? A. Yes.

Mr. Fulwider: I would like to offer this diagram of the Chester circuit in evidence as Defendant's H. I hand a copy to counsel. [205]

The Clerk: H in evidence.

[Note: Defendant's Exhibit H will be found in the Book of Exhibits at page 531.]

The Witness: I have also prepared a diagram of Figure 4 from the Nakashima patent, 1,678,573, to which I have added the interconnecting circuits as shown upon the Gibson patent, 1,906,260, to illustrate the manner in which the Nakashima game can be connected with other units to make a competitive game, from the Nakashima disclosure, and that of Chester.

Mr. Huebner: That is objected to upon the ground that it is reconstructed, by admission of the witness.

The Court: I don't think that should be done. I think so far as the prior art is concerned we should have, if anything at all, a general statement, if that is even necessary, but a reconstructed patent, as I have said, is merely

(Testimony of Harold W. Mattingly)

the opinion of a partisan, and I don't want that in the record.

Mr. Fulwider: We can use that in the argument?

The Court: Yes, you can use it in the argument. You patent lawyers make a patent an absolute mystery. The principals are so few, that I can cover it in one lecture. You can argue to me from the basis of this what is new, remembering the principle that you can't take an element from here, one from here, and one from there, showing they all existed years ago, to show there was no invention, because in that case there never could be invention, despite Mr. Justice Douglas' unfortunate statement that it requires a [206] spark of genius. If it required a spark of genius, there would be no invention.

Mr. Fulwider: I think your Honor is right.

Q: Mr. Mattingly, with the court's permission, would you very briefly, as expeditiously as possible, point out the salient features of the prior art patents in Exhibit E, I believe, and Exhibit D, as they pertain particularly to the disclosures of the Gibbs patent in suit, and the Fawn game in evidence? Before we do that we had better give some subscripts to the various patents.

The Court: Give them a name. Name them as they are.

Mr. Fulwider: That would be more convenient, if satisfactory.

The Court: Yes, start the way you have, in others, Nakashima, and others, as part of Exhibit D.

Mr. Fulwider: They are arranged in the order in which we wish to discuss them.

The Court: He has only spoken of a single one; that is the Chester. Go ahead.

(Testimony of Harold W. Mattingly)

A. The Nakashima patent, 1,678,573, shows a single game of the Bingo type, and is characterized by the fact that there is a playing field with a lot of apertures in it, into which balls would pass as they are rolled on the game board by the player, with a back board which shows an annunciator having a number of lights arranged in a geometrical pattern, [207] and in which are three lights in groups which are illuminated. The switches from those lights being closed will automatically operate a relay to ring a bell, signifying that the player at that table has made the winning combination.

Q. May I ask, in the Nakashima patent, each of the star holes has an electrical switch underneath the pocket?

A. That is correct. The drawing in the Nakashima patent, in Figure 1, only shows a star painted around one of the holes, but the specification indicates that each of the holes which is provided with a switch would also be surrounded by a star-shaped pattern, so that the players would have an indication as to which one of the holes would constitute a hole which would help to make the winning combination.

In the Hayashi patent, 1,614,471, there is a game similar to that in the Nakashima patent, in that it has a game board provided with a number of apertures arranged in exactly the same geometrical pattern as the arrangement of the annunciator lights and back board.

The game is played by means of peanut-shaped objects which are rolled over the game board, and the player attempts to get these peanut-shaped objects into the various holes in the board, and depending upon which of the holes are filled with the peanut-shaped objects, a winning combination of lights is illuminated on the annunciator



(Testimony of Harold W. Mattingly)

panel, and a win by a player is signified by the particular [208] combination of the lights on the annunciator that are illuminated.

Mr. Fulwider: The next patent is the Esmarian patent, I believe.

A. The Esmarian patent is somewhat similar to the two foregoing patents. Esmarian, 1,612,912, in which there is a game board over which an object is to be moved by means of a pool cue.

The object is, the ball, as it moves over the game board, it drops into one or another of the apertures, indicated at 14, there being a number of these apertures, each one of them having a switch associated with it, so that when the ball drops through any one of the apertures it is illuminated, and the corresponding light on an annunciator in the back panel of the game.

The Mader patent, 1,622,330, shows a game somewhat of the billiard type, in which a ball is to be rolled over the playing field. The playing field has a number of apertures, into which the ball may come to rest, to close a circuit, to illuminate lights behind an annunciator panel, constituting a back board on the game.

Q. The back board has five lights across the board?

A. The back board has five lights across, four down, in a rectangular pattern.

The Schneider patent, 1,788,336, shows a game [209] board, in which the game board is provided with a number of apertures, indicated by reference characters 39, 40 and 41.

The player attempts to shoot a ball along the game board to cause it to enter one or the other of these apertures. Underneath each of the apertures there is a pad-

(Testimony of Harold W. Mattingly)

dle-like switch, which will be closed as the ball passes through a particular aperture, and when the switch is closed it illuminates one of the three lights on the back board, numbered 70, 71 and 72.

Q. Is there any similarity between the structure shown in Schneider and Mader, and the Fawn game, which you have heard mentioned?

A. Primarily the similarity there is the use of the paddle-like switch operating ~~mechanism~~ that is actuated by the ball, as the ball passes through the aperture, and is returned to the player.

This is a game in which a single ball is repeatedly moved over the playing field to repeatedly operate switches beneath the apertures.

The McGregor patent, 1,260,691, discloses a target device,—I don't believe he calls it a game—in which the persons are attempting to shoot a series of targets which are arranged at the rear of the machine or the hall in which this device is located. Every time one of the targets is hit it operates a relay 32, there being one for [210] each of the targets, and when relay 32 is operated it closes a switch 41, in a series of circuits, so that in the hitting of all of the targets, and closing of all of the switches 41, in the series of circuits is completed on the master relay 42, and the master relay operates to switch the circuits to change the illumination of the target from the front illumination to the rear illumination in such fashion that persons who have been shooting at the targets see where the hits have been made.

Q. Did you compare that progressive circuit to the progressive circuit of the Gibbs patent?

(Testimony of Harold W. Mattingly)

A. Switches 41 are relay contacts which are closed upon the energization of the individual relays in the same manner.

The relays which go to make up a winning combination are a series of separate relay switches connected in series, so it requires the closing of all the contacts in the winning combination to complete the circuit. In that sense the two circuits are identical.

The Chester patent, 1,598,711, is representative to what we have called the competitive type of games, in which there are a number of games interconnected, to be played by a number of players, to be played simultaneously. All of the players are playing against each other in an attempt to make a win in their particular game. [211]

The particular game is a racing game, in which the players operate devices such as the wheel 19, in an effort to skillfully operate that wheel to advance their objects, which are the dancers 31, around a circular racetrack, and the first of the players who successfully gets his dancers to the end of the racetrack path closes a switch, which we can call a win switch.

That switch is indicated at 30 and 51 in Figure 8 of the Chester patent.

The closing of the win switch in the Chester game operates a relay 53, one of which is provided for each of the games, and upon operation of this switch the power is cut off from that of the other games in the series. The operation of that relay also closes a win light circuit to lamp 55, and maintains that lamp energized to signify the fact that the winner was the winner, and notifying all the other players there has been a win.

(Testimony of Harold W. Mattingly)

The Chester arrangement of interconnecting the games is so fashioned that the closing of the win switch and the operation of the win relay of a game closes the power circuit which goes to all of the interconnected games.

That is similar to the arrangements which are in the old Fawn game, in that the control is the opening of the power line; and the Chester patent shows the auxiliary circuit which extends up beyond the power switch to maintain the [212] power to the winning game, and the whole power is cut off from the non-winning games.

The Wallace patent, No. 1,697,701, is another of what we have called competitive games, where a number of players may compete against each other. This is a big race game, in which there are a number of racetracks alongside of each other, each of them provided with a moving object in the form of a pig and a little boy.

The players are each provided with an individual playing board, which is shown particularly in Figure 1, over which the player rolls a ball in an attempt to make it pass into one or the other of the three apertures at the end of the board. The ball passing through any of these apertures is caused to close switch 50, located beneath the apertures, and in that fashion to complete a circuit to an operating mechanism to advance the pig further, of the particular player, around its particular track.

The object of the game is to get one of the pigs to traverse the path to a winning position, and when the pig has arrived at a winning position for any one of the winning players, the position of the pig closes the circuit to a win lamp associated with that particular game, indicating that there has been a winner, and at the same

(Testimony of Harold W. Mattingly)

time it operates a power relay which cuts off the power to all of the other games, except that of the winner. [213]

The Higuchi patent, No. 1,454,968, is another of the competitive games, and is very similar to the Wallace game. In the Higuchi patent there is a series of parallel racetracks, one for each of the individual players, and at the forward end of these tracks for each of the tracks there is a game apparatus which is in the form of a lever on which a ball will rest.

When the lever is moved by the player operating a manipulator 90, the ball is projected upwardly in an effort to get it into a cup. If it arrives in the cup, it passes down through the cup and operates a switch as it passes through the cup, and in another position to be played again by the player. On closing the switch the mechanism is operated to advance that particular rabbit, which is on this racetrack, forwardly to the winning position.

When the rabbit of the player arrives at the win position the rabbit closes the circuit to a signal lamp 105, associated with that player, to indicate that there has been a win, and at the same time the circuit is completed to a relay which cuts the current off from all the rest of the race tracks so none of the other players can further advance their rabbits.

The Court: In each of these cases you have described the object is to get either a ball, an animal, or something into a particular hole, which stops the win, isn't that correct? [214]

A. In each of these last ones I have described, Chester, Wallace, Higuchi, the object is to make a win by having an object arrive at a winning point.



(Testimony of Harold W. Mattingly)

Q. Their object is to win by filling a series, just as they are in these games here?

A. Yes, Nakashima shows that, and also Higuchi shows also, that there must be the illumination of a given series of lamps for the purpose of establishing a win.

Q. It is achieved by only one shot, not by successive shots?

A. Yes, it is achieved by successive shots. It is required that there be three shots, and three lights lit to accomplish the result. In the Nakashima, combination, three illuminated lights make the win.

Q. What is the distinction, that is not in the others? Is there any distinction that requires a special arrangement?

A. In the Irsch patent, 1,458,884, it is very similar to the Higuchi patent, in that there are competitive games, of which the establishment of a winning circuit transfers the power line from the other players, and also illuminates on operation a win signal to signify which of the players has the winning game.

Q. What about the last three, Steinmetz, Blackmore, and Lynch?

A. Steinmetz is a game that continues for a given time [215] limit, and is then cut off. That is illustrative of the general type of the Fawn game, where there is a cut off.

Q. How about Blackmore?

A. Blackmore is one of the file references, not particularly pertinent.

Q. How about Lynch?

A. The same is true of that, I believe.



(Testimony of Harold W. Mattingly)

Q. Which do you consider the patent in this list that has more of the elements contained in the Gibbs patent than any other?

A. Nakashima patent is one of the closest to the construction shown.

Q. That is in the file wrapper, and was before the Examiner?

A. That is correct. Nakashima applies particularly as to Claim 3; and to Claims 6 through 10, which are claims of the Gibbs patent related to the competitive games, the Chester and Wallace patents are, in my estimation, the best.

Q. By Mr. Fulwider: Referring to these two diagrams put in evidence, Chester and Gibbs, G and H, I wonder if you would refer to those very briefly for comparison purposes of the structures and the Fawn game structure involved?

A. In the simplified diagram of Gibbs, which is Exhibit G, I have colored the circuits in the same manner as [216] I colored the circuits on the enlargement of the Gibbs patent drawing, which is Exhibit B, so that these circuits can be compared by merely comparing the colors.

In the Chester patent I have also colored the circuits in similar colors to compare the circuits in the Chester patent with the circuits in the Gibbs patent, which interconnect the several competitive games. [217]

In this Chester patent I have shown in the red circuit the win switch which energizes the relay "53," and then I have shown the purple circuit which is the transfer circuit or auxiliary circuit which supplies current to

(Testimony of Harold W. Mattingly)

the winning game after the other games have been cut off from power.

The green circuit is the operating circuit for the main relay which cuts off the power to the competitive machines.

Q. By Mr. Fulwider: Did you complete your discussion of both of those? A. Yes.

Q. I have one more diagram I think would be helpful, and that is an enlargement of that Fig. 9 of Plaintiff's Exhibit 2. Do you have one of these with you? That is different, is it not?

A. Yes. You had better use these. These are all alike.

Mr. Fulwider: All right. I should like to offer this in evidence as the others. The only difference between this blow-up and the Fig. 9, Plaintiff's Exhibit 2, is that in the left-hand machine the switch has been a little modified to show the operation. The circuits are colored.

Q. I wonder if you would refer to this and very briefly point out what those different colored circuits mean? That would be "I," would it not?

The Clerk: Is that admitted, your Honor? [218]

The Court: All right.

The Clerk: Exhibit I.

The Court: Where is "H"?

The Clerk: "H" is the diagram of the Chester patent.

The Court: Oh, yes. I have it.

The Clerk: Defendant's Exhibit I in evidence.

[Note: Defendant's Exhibit I will be found in the Book of Exhibits at page 533.]

(Testimony of Harold W. Mattingly)

The Witness: In Exhibit I I have traced the circuits which appear on Fig. 9 of Plaintiff's Exhibit 2.

The brown circuit which I have traced is the circuit which extends through the switch that is operated by the ball and lights the light on the annunciator panel.

The circuit which is indicated in red is the winning circuit, that is, it is the circuit which is completed after a winning combination has been made. And the switch "M", that is, the mercooid switch "M," has been closed by the mechanical operation of the win bar.

The circuit which I have indicated in green is the circuit which extends from the relay in the winning game to the operating relay "106" that cuts the main power supply off from all the machines.

The purple circuit is the auxiliary power circuit which supplies the winning game with its power after the other games have been cut off from the source of power.

The little yellow circuit, which I have indicated there, is the auxiliary circuit to inter-connect the power cut-off relay with the main line switch. [219]

I might point out that the purpose in using the power cut-off switch "111" to be controlled by the relay "106" is that the power supply for the relay "106," the lights and the switches and the other relays in the Fawn game, are 18-volt relays, lights and switches.

The name "power switch" which has to cut off the power from all of the machines is a heavier switch and is operated on 110 volts.

The operation of the circuits would be the same if the relay "106" was allowed to directly operate the main line switch "110."

(Testimony of Harold W. Mattingly)

Mr. Fulwider: I believe that closes Mr. Mattingly's direct examination.

The Court: All right.

Mr. Fulwider: You may cross examine.

### Cross Examination

By Mr. Huebner:

Q. Mr. Mattingly, there is not any patent in the prior art, which, in your opinion, is an anticipation of the Gibbs patent in suit, is there?

A. The Nakashima patent, in my opinion, is an anticipation of Claim 3 of the Gibbs patent, unless that claim is limitedly interpreted to require the use of the relay to satisfy elements "F" in the break-down of Claim 3 [220] which I have made.

Q. Let me get this clear now. You claim that Nakashima is a complete anticipation of Claim 3 of the Gibbs patent, is that right?

A. Yes. That is, it has to be qualified.

Q. Well, do not qualify it. I want to know whether in your opinion the Nakashima or any other patent is a complete anticipation of Claim 3 of the Gibbs patent.

A. Yes, Nakashima is an anticipation of Claim 3.

Q. All right. Now, before we talk about that, is there any other patent in the prior art that, in your opinion, is a complete anticipation of any of the other claims?

A. There is no single patent.

Q. All right.

A. In the group that we have referred to which is an anticipation of the claims.

Q. All right. Now, you are aware that Nakashima, as was pointed out, was a file wrapper reference, are you not?

A. That is correct.

(Testimony of Harold W. Mattingly)

Q. Are you aware that not all of the sockets into which balls may be deposited are wired?

A. That is correct.

Q. Are you aware that three balls are used to play that Nakashima game? [221]

A. Yes. That would be required in the Nakashima game because the switches in the Nakashima game are not switches which will remain closed after they have been energized, and—

Q. Do you understand—

The Court: Let him finish.

Mr. Huebner: Pardon me.

The Witness: And the balls have to remain in the pockets in order to maintain the switches closed and the lights lighted.

Q. By Mr. Huebner: The balls in the Nakashima are not returnable past the switches, are they?

A. That is correct.

Q. The player rolls three balls, either all at once or separately, and those three balls may or may not light in pockets, is that right?

A. That is right.

Q. And if they light in a pocket, they stay there?

A. That is right.

Q. Are you aware that there are six holes going one way and five holes going another?

A. Yes, that is right.

Q. Well, then, that could not be truly a Bingo game, could it, or an adaptation or modification of the Bingo game because you could not have a diagonal win in there, could you? [222]

A. It depends on what you mean by a "diagonal win."

(Testimony of Harold W. Mattingly)

Q. Well, if you got six one way and five another, you cannot have a true diagonal line of lights, can you?

A. Yes, because the lights are not arranged in that combination. The lights are arranged in three rows of three, and you can get a diagonal win.

The Court: Let me interpose one question here.

In looking at the file wrapper, you will note that what is at present Claim 3 was originally Claim 9 and that the Examiner did not modify that, except as to certain language, but he rejected every possible claim traceable to Nakashima.

Do you notice that?

The Witness: Oh, yes.

The Court: All right. So that the present Claim is with three modifications, three words. There was an additional claim that was allowed, despite Nakashima?

The Witness: Yes. The original Claim 9 was allowed, in my opinion, because the Examiner could not find that additional element in the Nakashima patent, this additional element being this extra means for energizing the light.

The Court: All right.

Q. By Mr. Huebner: Did you have any trouble understanding the Gibbs patent? A. No.

Q. Or in reading the claims of it? [223]

A. I had a little difficulty in determining what was meant by Claim 9, I believe it is. That claim seems to be—

Q. Are you satisfied— A. —a little broad.

Q. —that you have resolved that uncertainty in your own mind?



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A. That claim in its language calls for things which are rather opposite to the disclosure of the Gibbs patent.

Q. Well, other than Claim 9, do you understand the rest of the claims? A. Yes.

Q. You are aware, are you, that Mr. Fulwider, as attorney for the defendant, has pleaded in his amended answer that the Gibbs patent is ambiguous and void under Section 4888 of the Revised Statutes?

A. I am not aware of that.

Q. If that is so, you disagree with him in that respect?

A. No. While I understand, and while I read and draw a conclusion as to what the claim—

Q. I cannot hear you, Mr. Mattingly.

A. I said while I can read and draw a conclusion as to what the claim means, it may still be ambiguous and difficult to determine exactly which elements are covered.

The Court: Let us not talk too much law. Let us get back to the claims, please. [224]

Is not all of Claim 3 carried over into Claim 4 so that assuming that your contention is correct, every element in Claim 3 is also in Claim 4, is it not, with something added? In other words, Claim 4 is everything that is in Claim 3? The first seven lines are carried over without a change of words. The rest of them are changed in order to add the additional elements: is that true?

The Witness: That is true. I believe an analysis of Claim 4 shows it covers the same subject matter of Claim 3 in that it is also subcombination claim covering only one game.

Q. By Mr. Huebner: Claim 3 is broader than Claim 4 in that Claim 4 specifies a relay and armature in a

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certain circuit, whereas that particular limitation is not found in Claim 3?

A. When you say that limitation is not found in Claim 3, I do not believe that is true. I think the limitation is found in Claim 3, but it is expressed in broader language as means.

Mr. Huebner: I doubt, your Honor, that we have much more cross examination.

The Court: Well, do not look at the clock. We are going to run long hours today. I am going to finish this case today, gentlemen.

Mr. Huebner: May I have a moment, then? [225]

The Court: Yes. We are going to finish this case today, except for the argument. And I shall determine how much argument I want.

I do not believe in briefs in these cases. I believe in oral argument. So I think we can finish at least the evidence today. I hope to finish it all today.

You see, I have other work to do. And I cannot take too much time with this type of litigation.

Mr. Fulwider: May I ask a question? Is there a possibility that your Honor would want us to argue it this afternoon in the event we close the testimony?

The Court: I may, yes. That is my system. I do not believe in briefs. After I get the oral argument, if I want briefs I will ask for them.

Mr. Fulwider: I was not speaking of briefs. My only thought was as to my own self. I would much prefer to see the record of today's testimony.

The Court: You can remember it just as well as I can. You have furnished me with a copy, and I can look at it. I am sorry you have forgotten. We have

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quit trying these cases in a leisurely way as we did years ago. You gave the judge a copy of the record and then took about a month. As a matter of fact, it is a waste of money to get a record for me because I never look at it. Even when I write an opinion I never use the record. [226]

I have always informed counsel that, so far as I am concerned, the rule requiring the judge to be furnished with a copy of the transcript does not apply in my court. I do not want it. I will not look at it.

Mr. Fulwider: At least our copy was primarily for our own benefit.

The Court: Well, we will see. I do not know how much testimony you will have. I might give you time to prepare the oral argument.

Mr. Huebner: No further cross examination.

The Court: All right. There is just one question I want to ask.

Aside from the certain descriptive material relating to energizing which, of course, merely applies an ordinary principle, there is no similarity of aims or means between Gibbs and your best reference, Nakashima; is that not true?

The Witness: I do not think that is quite true. In the Nakashima patent you have the disclosure of the game which includes the apertures and the balls and the switches and the back board with an annunciator, and the object of the game is to complete a winning combination by placing the balls in the correct apertures to make that winning combination.

The Court: In your opinion, then, Nakashima, as you stated, anticipates entirely? [227]

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The Witness: Yes.

The Court: All right. Now, as to all others, the principle I spoke of applies: all you find in others is one or two elements which also exist here but not in the same combination; is that not true?

The Witness: That is, I don't find the complete combination specified in the claim in any one of those.

The Court: Of course, you being also a lawyer agree that the mere presence of one or two elements in the prior art has not, since 1878, been a ground for denying validity to a patent?

The Witness: Only the presence of those things in the prior art demonstrates it did not require invention to put them together.

The Court: Well, that is not a limitation. I shall read to you what the Supreme Court says in the famous case of *Bates v. Coe*:

"Where the thing patented is an entirety, consisting of a single device or combination of old elements, incapable of division or separate use, the respondent cannot escape the charge of infringement by alleging or proving that a part of the entire thing is found in one prior patent or printed publication or machine, and another part in another prior exhibit, and still another part in a third one, and from the three or [228] any greater number of such exhibits draw the conclusion that the patentee is not the original and first inventor of the patented improvement."

The Witness: That is correct.

The Court: That is correct. And you know the defense has become so known that it has been given a name: A mosaic defense.

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The Witness: I think that is true.

The Court: That is correct. All right.

Mr. Fulwider: May I ask one question, your Honor, just in response to that?

Redirect Examination

By Mr. Fulwider:

Q. Mr. Mattingly, you do not need more than two patents to invalidate or to meet, rather I mean, all of the terms of any of the claims in Gibbs, do you?

A. No. The combination of the Nakashima disclosure of the single game and the Chester disclosure of the competitive multiple game would be all that is necessary to anticipate the rest of it.

Q. It would be all the elements of Claims 6 to 10?

A. That is right.

Q. In your opinion, Nakashima alone meets all of the elements of Claim 3? [229]

A. That is right.

The Court: All right, let us read something and see if you agree with me.

I shall read from the Supreme Court and see if you agree with me. My latest opinion in patent law is *Holmes v. Atlas Garage Door Co.*

You are familiar with that one, are you not? Your former employers, Lyon and Lyon, were in the case; and I ruled against them because I declined to cite a person for contempt on the basis of violating a prior decree I had issued, on the ground that a new device involved questions I did not care to settle on the summary proceeding.

(Testimony of Harold W. Mattingly)

This is the case of *Holmes v. Atlas Garage Door Co.*, 54 Fed. Supp. 368, decided in 1943. This is what I said:

"Even if the elements of novelty be, as contended by the defendants, limited to the arcuate slot, nut and bolt, in order to achieve flexibility and adjustability, the combination of these elements with the others is patentable invention. Concededly, there is no device in the prior art which contains these elements or achieves this result. The fact that each of these elements may exist, separately, in one form or another, in the prior art, does not invalidate the patent in suit. As said in *Atlantic Refining Co. v. James B. Berry Sons' Co.*, 3 Cir., 1937, 106 F. 2d 644, 650: [230]

"The defense offered is a mosaic defense and as was said by this court in *Craft-Stone, Inc., v. Zenitherm Co., Inc.*, 3 Cir., 22 F.2d 401, 402, 'The patentee invented a new and useful product, and it is not permissible for an infringer to go to the prior art and defeat the patent by selecting the various elements of the patentee's process from different patents, bring them together, and say that this aggregation anticipates. Knowledge after the event is always easy, and problems once solved present no difficulties.'"

The Witness: I agree with that conclusion where they would, as you say, make a mosaic combination.

The Court: You admit you have to combine two patents of prior art in order to get the essential element of this, do you not?

The Witness: But it very frequently occurs that you can combine the disclosures of two prior patents without invention, and they demonstrate that there would be no invention involved in putting them together



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The Court: Of course, then you have an aggregation; but we combine merely the element to achieve something that neither of those achieve.

The Witness: May I point out one thing that is—

The Court: Wait a minute. Wherein does the Chester [231] patent— was it the Chester patent that you picked? The Witness: Yes.

The Court: The Chester and Nakashima achieve the result that he tries to achieve here, or the two of them combined, wherein do they achieve the result?

Do not tell me they shut off the light. I have heard that too often. That is a fake and does not mean anything. You are achieving a worse result. If you achieve a worse result from the standpoint of invention, you do not have anything.

The Witness: I do not believe I follow you on the worse result.

The Court: A different or better result must be achieved; is that not true?

The Witness: It is the same result. Perhaps the difficulty is that we are trying to say that the combination of the two patents must achieve a better result than the patentee's result. Do I understand you to mean that?

The Court: The very nature of it must be an improvement over the prior art.

The Witness: The patented machine must be an improvement over the prior art; that's right.

The Court: Of course, what is anticipation before the patent would be violation after the patent, would it not? The Witness: Yes. [232]

The Court: That is right.

The Witness: That is perfectly right.

(Testimony of Harold W. Mattingly)

The Court: All right. So that if you have taken the same element of combination to get away from the doctrine of equivalents, you have to achieve a different or better result than they do. Otherwise the doctrine of equivalents is meaningless.

What does the doctrine of equivalents mean?

The Witness: Well, since the Supreme Court's decision in the Halliburton case, I am not sure that I know.

The doctrine of equivalents, as we have always understood it, was where one device has been bodily substituted for an element of the patented combination and it functions in the same way—

The Court: Substantially. No, substantially in the same way.

The Witness: Substantially the same way.

The Court: And achieves the same result?

The Witness: That is correct.

The Court: That is right. There must be, in order to come within the doctrine of equivalents, identity of—wait a minute. Let us get the second Holmes case.

There must be identity of means, identity of operation, in order for the doctrine to apply; is that not true?

The Witness: Very correct. [233]

The Court: Then in determining whether that exists, we have various tests.

I am reading now from the second case of *Holmes v. Atlas Garage Door Co.*, decided on December 26, 1945, and reported at 63 Fed. Supp., where I discussed the doctrine of equivalents very fully in order to hold that. I

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was not going to resort to summary process of punishing a man for contempt. So I say:

"... The courts must resort to tests such as interchangeability, substitution or elimination of elements," whether a certain operation is the equivalent of another operation to achieve adjustability.

Then I went back to another case of mine way back in 1939, *Mantz v. Kersting*. I do not know whether you were in that case. No, you were not. That was in order to determine whether a manual operation was the equivalent of a mechanical automatic means of achieving the other.

In the light of that, in the light of those three elements, identity of means, of operation and result, do you still maintain that you find them in *Nakashima* or in *Chester* or in both of them combined?

The Witness: Yes.

The Court: You do. All right.

Mr. Fulwider: Might I ask one more question?

The Court: Go ahead. [234]

Mr. Fulwider: Along that same line?

The Court: Ordinarily I would not ask these questions; but in view of the statements I made before as to my view on experts, when a man is also an attorney I feel privileged in expressing myself in a manner which I would not if he were not an attorney.

Mr. Fulwider: I am very glad you did.

The Court: I gave the bar notice many years ago as to my views on experts, and that is why I have discussed matters I would not discuss with an ordinary expert who was not also a patent attorney and also a patent lawyer.

(Testimony of Harold W. Mattingly)

I also believe that is a question for me to decide. I just wanted to know how far he will go in supporting his views.

Q. By Mr. Fulwider: In line with your last question about the three identities of means, operation and result as being the essence of the doctrine of equivalents, Mr. Mattingly, in considering the Fawn game do you find those three identities between the Fawn game and the Gibbs patent? In other words, as the Fawn game operates, is there identity of means, identity of operation and identity of result? A. Not in my opinion.

The Court: Well, I shall let you explain. Why do you [235] not think there is identity of means?

The Witness: We are comparing the Gibbs patent and the Fawn game particularly with reference to the claims of the Gibbs patent.

The Court: No, leave the claims out. Let us consider the entire object mentioned which you have a right to interpret in the claim.

Of course, a man cannot enlarge. A man may limit. A man may limit his invention by his claims, you see. He can not enlarge.

The Witness: That is right.

The Court: He cannot enlarge them, you see.

The Witness: That is right.

The Court: In other words, there may be restrictive language in the descriptive matter which may limit the claims. That is why the courts say you have to read them as a whole and take his representation of the device into consideration.

The Witness: Well, that is correct. The means in the Gibbs patent are all electrical means, and the relays

(Testimony of Harold W. Mattingly)

that are used, that is, the relays "R" that are used to set up the series circuit winning combinations are electrical devices, and they operate in a fashion to set up a progressive win circuit.

Now, there is no such means in the Fawn game. There is no progressive circuit which is required to be completed by the operation of the— [236]

The Court: You have a mechanical way which achieves the same result?

The Witness: It achieves the same result, and there is the only similarity between the two devices.

The Court: I see. All right.

The Witness: It is not similarity of mechanism nor mode of operation.

Q. By Mr. Fulwider: As to the new Fawn game, even the result is not the same, is it?

A. That is correct.

The Court: Only in the sense that the game does not stop? That is the result. The result is to give to a winner who fills in five holes in a row and really stops the game as to the others, you stop it automatically by ringing a gong at the end of a minute and a half?

The Witness: Yes. The Court: I see.

The Witness: The result of eventually stopping the game is accomplished.

The Court: I do not know whether that would be considered a result. [237]

Q. To get it clear, Mr. Mattingly, isn't it true that in the Gibbs game it is a competitive game, and competition results between the individual players, whereas in the Fawn game, that has a timer, there is no compe-

(Testimony of Harold W. Mattingly)

tition between the players; they merely play for a stipulated time? A. That is correct.

Q. There is that difference in the result—one is competitive, and one is not competitive?

The Court: But considering the prior art you took into consideration the competitive element of the game?

Mr. Fulwider: That is true, but in the Fawn game you do not have the competitive element.

Mr. Huebner: You have a competitive element as long as the time clock is running.

The Court: Let us not argue. I want you to know that nothing I have said has any personal reflection.

The Witness: I understand that.

The Court: After all, you had all the say you wanted to as to your views. I merely expressed my views generally as to certain type of expert testimony with which the court is familiar.

Q. By Mr. Fulwider: In the play of the game that you witnessed when you were down there, with Mr. Huebner and Mr. Burke, did you see any instances where there was no winner in the altered game, and two or three games were played before there was a winner? [238]

A. Yes, several times. It was required to play two games before a winner, and at least once it was required to play three games before there was a winner.

Q. The games you witnessed down there, were there more than one winner at a time?

A. Yes, I think it happened that three winners came in one game. That was played the third time, so the



(Testimony of Harold W. Mattingly)

odds were the same on that as they would have been in a single game.

Q. Where there were multiple stakes, and there were three winners in the game, those three shared in stakes together? A. Yes.

Q. For the three winners, how many were not?

A. Sixteen or twenty.

Q. There would be 13 losers in that particular setup?

A. That is right.

Mr. Fulwider: That is all the examination we have.

Q. By Mr. Huebner: If only one wins in that game, under those circumstances he would get a bigger prize?

A. That's right.

Q. So would the three winning prizes be reduced, so there still is competition, isn't there?

A. I don't see that that makes—

The Court: That is argument. [239]

(Whereupon, at 12:00 o'clock noon, an adjournment was taken until 2:00 o'clock p. m. of the same date.)  
[240]

Los Angeles, California; February 20, 1947;

2:00 o'clock p. m.

Mr. Huebner: To complete the pleadings, in the case of Gibbs vs. Faulkner, I have served, and we now would like to file plaintiff's reply to the defendant's counterclaim.

Mr. Fulwider: Call Mr. Cannon.

## JAMES H. CANNON

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: James H. Cannon.

## Direct Examination

By Mr. Fulwider:

Q. Mr. Cannon, are you connected with the Cannon Electric Development Company?

A. Yes, that is a sole proprietorship, which I own.

Q. Are you acquainted with Mr. John Gibbs, for whom the Cannon Electric Company has manufactured Fascination games?

A. Yes, I have known him about 18 years, as nearly as I can recall.

Q. Can you tell us approximately when Mr. Gibbs first came to you with respect to manufacturing the Fascination games?

A. There was no Fascination game at that time. As nearly as I can recall, it was nearly a year prior to his first [242] contact with me before we went ahead with the construction of a unit, and my memory is somewhat dim for 17 years back, without confirmation from records; but I would say we built that first unit, for which I think he conceived the name "Fascination" about that time, and shortly after the obtaining of it, somewhere after the winter season of 1930. It could have been the fall or the early spring, before the summer season opened at the beach.

Q. How did you happen to meet Mr. Gibbs?

(Testimony of James H. Cannon)

A. He was referred to me by a chap that I subsequently recall as Porter of Graybar. I don't think I knew him at the time, but he had some conversation with Mr. Porter with regard to such a game.

At the time he conceived of operating one having a four-square lay-down, 16 holes. We had some conversation about it at the time, and the price he anticipated building it for was way out of line, and I threw it by the boards until about a year later.

Q. When he came to you the first time, Mr. Porter referred him to you, did he have any drawings, wiring diagrams?

A. Yes. I don't recall whether he mentioned Mr. Porter at the time he first came to me, but Porter made out a diagram for a four-square hole game, which anyone skilled in the art could do, but he lost that, and by the time I got around to building the other I refigured it again. [242]

Q. Did Mr. Gibbs make any wiring diagrams for you during any of these conversations?

A. No. I would say he was more concerned with the completion of the game he had in mind, which I knew nothing about. He wanted a relay controlled bank, and an annunciator, which he was going to produce. I did not know what a Bingo game was for another year.

Q. I take it you do know what a Bingo game is now. Does this Fascination have any relationship to a Bingo game to your mind?

A. Bingo, as I interpret it,—Bingo is a deviation of the game of Lotto, which is not a game of skill, except as on the beach gamblers can manuever it as they see fit.

(Testimony of James H. Cannon)

Gibbs' game is strictly a game of skill, because each player has his own laydown. The Bingo game has about 75 numbers with cards that have 25. I don't know how many combinations work out. I believe some 8 in all.

The Gibbs game is individually played. The game was taken exception to by some of the politicians of Long Beach, who had a monopoly on all the buildings, except his. The judge went out himself, played it one time, and decided it was a game of skill.

The Court: Gibbs had to buy the building?

The Witness: Bixby owned all the rest of the waterfront. [243]

Q. By Mr. Fulwider: Reverting for a moment to the Porter diagrams, were they similar to the wiring of the machine which was finally made by you?

A. Identical. You just added another circuit, with 5 across, and you would have a possibility of 12 winning combinations, 5 vertical, 5 horizontal, and 2 diagonal; and with 4, only a possible 8,—4 diagonal, and 4 vertical. Ours was a little complex. It had 25, and the cutout was similar, and made it a free play, like Tango.

Q. When he first came to you he had in mind four runs?

A. That was for the purpose of economy. He did not have any conception that adding more than 50 per cent was going to run up the price.

Q. He wanted 5 after that?

A. The first one I ever built was 5.

Q. Did you have a definite conversation with Mr. Gibbs to know whether or not he knew the wiring diagram he brought to you?

(Testimony of James H. Cannon)

A. He seemed to understand it thoroughly. Why he came to me primarily was because I had a particular relay that could be used for the purpose. We had the tools and facilities to produce it, and also the lamp annunciator, because we were making hospital equipment, and we adapted the machine to it. We did not use relays in the hospital equipment, but we used annunciators, which were used for signal purposes, [244] which were more or less of a complex nature. We were more or less specialists in it.

Q. When he came back to you, you had to make out new diagrams yourself?

A. That was not of any particular concern. The particular concern at the time was in digging up an angel to finance it. That is where the delay occurred.

The Court: You were not interested in the invention?

A. No. I was making some relays, with the anticipation that if the thing clicked, I anticipated if he could pay me enough cash, so it would not be a total loss, and could starve through the winter, and hold ends together until summer, we could get some business out of it. Seventeen years after the production of the game, and 20 sold for the whole year 1943, you can figure the amount of grief I had. It wasn't a very profitable venture on my part.

Mr. Fulwider: I believe that is all. Any questions?

Mr. Huebner: No questions.

The Court: You don't claim any right, assuming this is a good invention,—you don't claim any right to it at all?

The Witness: I haven't seen the Gibbs patent; but I take it it is the Fascination game.

(Testimony of James H. Cannon)

The Court: Yes.

The Witness: The game itself was his own conception, because I did not know what a Tango game was. I performed a professional service.

The Court: You performed a professional service in devising—

The Witness: What he wanted.

The Court: What he wanted, and having it operate the way he conceived it?

The Witness: That's right.

The Court: For which you were paid?

The Witness: Yes. He built the game in its entirety from the day the conception took place. I merely made the relay signals and annunciators.

Q. By Mr. Fulwider: He presented the problem to you as to the electrical part of the game, and all you did was to solve the problem?

A. He did not really present a problem. He wanted to build a game to raise some money. I built the technical proposition for him.

Q. By the Court: Many a time, in your line of work, a man has an idea, but he does not have the practical skill to—

A. Adapt it to practice.

Q. And you were lending your professional services, in anticipation of the business which you might get?

A. I would not consider myself an inventor, unless I conceived the idea. He wanted me to apply my professional [246] service, based upon 30 years' experience.

Mr. Fulwider: Mr. Gibbs.



J. T. GIBBS

recalled as a witness in his own behalf, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Fulwider:

Q. Mr. Gibbs, we will make this as short as possible. There is not much question but what you started, or at least conceived the Fascination game early in 1930, and completed the building of the first one by the end of 1930. Now, at the time immediately prior thereto you owned one of these Grunt-Derby-Pig games?

A. I was interested. I owned part of it.

Q. You were part of the corporation which was operating in Long Beach? A. Yes.

Q. There was one thing I forgot. You purchased that from Mr. Wallace of Ocean Park?

A. Yes, I did.

Q. You knew he had a patent on that, did you not?

A. He advised me of that. I never saw the patent.

Q. Do you recall whether or not the game you had had any patent number on it?

A. No, I can't. I don't know if it had one on or not. [247]

Q. I would call your attention to a copy of Wallace's patent No. 1,697,701, which is part of Defendant's Exhibit D. Will you look at this drawing, and tell me if that is approximately what your pig game was? You see it has a playing board with three holes.

A. I believe that is the same game. I believe they had two more holes in the playing board. As I recall, I think there were five.

(Testimony of J. T. Gibbs)

Q. There was a switch made up of a spring contact underneath the playing board, was there not, so that when the ball went through a hole it closed that switch?

A. There was a forked-like lever there that protruded through the side of the board, that made a brush contact with the plate each time that went down, and energized the motor that progressed the pig.

Q. Each time you got a ball through one of those holes, that closed the switch, and energized the motor, and the pig went up one notch?

Mr. Huebner: I object to that upon the ground that it is solely prior art, and not pleaded. The patent shows what it is. That is the only thing he is entitled to put in.

Mr. Fulwider: I want to except to that.

The Court: Read the question.

(Question read by the reporter.)

The Court: Overruled. [248]

The Court: Read the question.

(The question referred to was read by the reporter as follows:

"Q. Every time you got a ball through one of those holes that closed a switch and energized . . . .")

The Court: What are you showing him?

Mr. Fulwider: This Wallace patent, your Honor.

The Court: I see. All right. Overruled.

Q. By Mr. Fulwider: Just one more question on that and then we are through.

I call your attention to Fig. 10 which indicates a series of lamps. This is the game which you operated when a man was a winner by reason of having his pig get at the top. A light went on, did it not, for his own machine?

(Testimony of J. T. Gibbs)

A. A light went on at the top of the ramp when the pig was there. As I recall the game, there would be many of those close to the edge, and you would have to get up and practically draw a line. So they did put a light on. I don't know whether it came that way at first or not.

Q. That was to indicate which one won?

A. That is right.

Q. When you had a winner or when one person won, then there was means for locking out the other games so that they couldn't get their pigs to go any further?

A. It would shut off the entire circuit. [249]

Q. That is right. Now, you mentioned, I think, the Coney Racer, which was a rabbit game.

I call your attention briefly to a copy of the Higuchi patent, No. 1,454,968, Fig. 1.

Does that look anything like the Coney Racer that you mentioned yesterday? A. Yes, it does.

Q. It has a series of rabbits going up an incline, and each of those rabbits is moved along by the operation of an individual player; isn't it? A. That is right.

Q. And each rabbit has a win light at the top so that when he wins, and if he wins, the light goes on?

A. That is right, yes.

Q. Do you recall whether or not when you had a winner in the rabbit game, the other games were locked out? A. The other rabbits stopped their motion.

Mr. Fulwider: Yes. That is all.

Mr. Huebner: No questions.

The Court: All right, step down.

(Witness excused.)

Mr. Fulwider: I would like to put Mr. Mattingly back on for a few minutes.

In comparing notes at lunch time we discovered that no where in the record is there any adequate description of the [250] timer device in the new Fawn game.

We should have, I believe, in the record something to that effect; and we have some blow-ups illustrating that circuit.

So with your Honor's permission, I should like to call Mr. Mattingly again for a few minutes.

The Court: All right.

HAROLD W. MATTINGLY (Recalled)

Direct Examination (Resumed)

By Mr. Fulwider:

Q. Mr. Mattingly, will you describe for us the operation of the new Fawn game, that is, the Fawn game which employs the timer?

A. In describing the new Fawn game that includes the timer, I would like to refer to some drawings which I have colored.

These drawings are copies of Exhibit A which was attached to the affidavit of Mr. Hatherell and on file in this case.

Q. I believe these are duplicates of the wiring diagram which is a part of the Plaintiff's Exhibit 1, isn't it, or 2?

Mr. Huebner: I don't know until I see it.

Mr. Fulwider: Did you put it in?

Mr. Huebner: We did not offer this. [251]

The Court: Is it the same?

The Witness: That is it, your Honor.

(Testimony of Harold W. Mattingly)

Mr. Fulwider: You did not put that in evidence, then. I thought you had.

Mr. Huebner: No, we didn't put this in evidence. It has errors in it, anyway.

Mr. Fulwider: You are entitled to a copy, if you like, errors or no errors.

We would like, then, your Honor, to put that affidavit of Mr. Hatherell in with the attached exhibit as one of the defendant's exhibits so that we will have it in the record.

The Court: Is this a description of the game?

Mr. Fulwider: That is right.

Mr. Huebner: Your Honor, I object to the introduction of the Hatherell affidavit. Mr. Hatherell is present in court, and the affidavit, we contend, is erroneous and misleading. I don't think that that should be in as an exhibit.

The Court: Well, let us see.

Mr. Fulwider: As an exhibit to the interrogatories.

The Court: I will allow the map, but I don't want to put in the affidavit because it is not proper, except on a hearing on a temporary injunction to use affidavits. This is the trial of a cause, and the witnesses should testify in court.

If you want Mr. Hatherell to take the stand and give a [252] description orally, subject to cross examination, all right.

Mr. Fulwider: I don't think we really need the affidavit. This is the same drawing.

The Court: Any objection to the drawing, I mean as illustrative?

(Testimony of Harold W. Mattingly)

Mr. Huebner: The drawing itself contains an error, your Honor. But we can point it out on cross examination.

Mr. Fulwider: The error is very simple. It is merely the switch is shown shut instead of open.

May we mark this?

The Court: This is a simple mechanism. It seems to be very complicated here. At any rate, the man who manufactured them thought they were complicated.

Mr. Fulwider: May we offer this and have this marked as our next exhibit?

The Clerk: Exhibit J.

The Court: It is merely in conjunction as giving what?

Mr. Fulwider: To illustrate the testimony that the witness is about to give.

The Court: Well, all right. It may be introduced.

The Clerk: Defendant's Exhibit J in evidence.

[Note: Defendant's Exhibit J will be found in the Book of Exhibits at page 535.]

Q. By Mr. Fulwider: Now, will you, Mr. Mattingly, referring to Exhibit J and making any corrections that have to be made, describe how the new Fawn game operates?

A. The Exhibit J is a diagrammatic illustration of [253] the apparatus and the manner in which it operates in the changed or new Fawn game.

The playing board in the new Fawn game is identical with the game board that was used in the old Fawn game



(Testimony of Harold W. Mattingly)

The annunciator comprising the five vertical and five horizontal rows of lights is exactly the same as in the original Fawn game.

The mechanical switches and mechanical win combination set up on the new Fawn game is identical with that in the old Fawn game.

The win switch "M" that is shown on Exhibit J is the same mercoid win switch which had been used in the original Fawn game, and it operates in exactly the same manner as in the original Fawn game.

The relay "98", shown on Exhibit J, has been changed; and it now operates to effect the operation of only one of the switch blades, which switch blade is effective merely to transfer the power circuit from conductor "77" to conductor—I beg your pardon—from conductor "78" to conductor "78-prime" whenever a winning combination has been set up on the game board and the win switch "M" has closed.

The arrangement for controlling the main power switch "110" in the new Fawn game is different from that in the original Fawn game.

In the original Fawn game the power switch "110" was a [254] normally energized—it was the contacts of a normally energized relay "111" which relay was kept energized through the operation of a relay—I don't have that other diagram here.

Q. Here is Fig. 9 of the old apparatus.

Before you go further with regard to switch "110" on the new one, I believe switch "110" in this should be open on this diagram because these relays down here are open. Is that not correct?

A. That is correct.

(Testimony of Harold W. Mattingly)

Q. You might explain that when you get to it.

A. In the old Fawn game the main switch "110" was controlled by the operation of the relay "106" which was energized immediately upon the making of a winning combination on any of the boards.

In the changed or new Fawn game the relay "111" which operates the switch blade "110" is still a normally energized relay under the control of an auxiliary relay "151", which relay is in turn controlled by a switch, controlled by the time clock mechanism which is shown at "200" on the drawing, Exhibit J.

Another feature in the new Fawn game, which is different from the old Fawn game, is the addition to the reset bar or handle "207" of switch "208" which will be momentarily closed when the reset bar is operated to reset all of the switch [255] arms of the games at the end of the game.

The way the new Fawn device operates, the completing of a winning combination operating the switch "M" on the winner's board operates the relay "98" which merely shifts the power circuits on that winning board away from the power line "78" and on to the power line "78-prime" which extends from the source of power on the far side of the power switch "110."

The operation of the relay "98" in no way affects the stopping of the game.

Q. That is the circuit you have colored red, is it not?

A. The circuit controlled by the winning switch "M" to the relay "98" I have colored red on this diagram, Exhibit J.

(Testimony of Harold W. Mattingly)

I have illustrated the transfer of the circuit from one power line to the other by showing the new or auxiliary circuit consisting of the conductors "101-103" in purple.

The new Fawn game is started by the operator of the set of machines, moving the reset handle "201" downwardly to mechanically restore all of the switch blades and paddles on all of the machines and at the same time closing the switch "208" which energizes relays "161" and "151".

Relay "151" closes its contacts "150" to thereby establish a circuit which energizes the main switch "111", that is the coil of the main switch "111", to pull the main [256] switch into the circuit closing position, and that is the position in which that switch "110" is shown on Exhibit J.

To make the diagram completely accurate, the switch "110" should be shown in its open position since the contacts of relay "151" are shown also in open position on the diagram.

The relay "161" when it is energized still by the closing of switch "208" closes its contacts "162" and in that way supplies current around the switch "208" to keep the relays "161" and "151" energized, even though the reset handle is allowed to return to its normal position.

The purpose of that is that the time clock switch is arranged in such fashion that it takes a few seconds after the time clock is started before the time clock switch will move to a closed position.

The operation of contacts "160" on relay "161" and contacts "150" on relay "151", as I pointed out, close the circuit to the main switch coil "111" and also to a circuit leading to the motor on the timer.

(Testimony of Harold W. Mattingly)

The timer itself consists of a box upon which is mounted a disk in the form of a cam, identified by the reference character "201" on Exhibit J.

The cam has a notch "203" at one point around the periphery of the cam into which rests a finger "204" pivotally mounted and having a mercury switch "205" mounted on it.

As the cam "201" is rotated by the motor "200" and the [257] notch in the cam is moved from under the finger "204" the finger is lifted or tilted to close the switch "205" and the switch "205" continues the energization of the main switch "111" for the time period required for the cam to make one complete revolution and realign the notch "203" under the finger "204".

At that time the switch "205" is opened, and the circuits to relays "151" and "161" are open; and they open their contacts and they in turn de-energize the main switch operating coil "111".

The timing motor is connected to the cam by means of a friction drive so that by operating a handle "107" the friction disk "202" can be moved toward the center of the cam "201" or it can be moved away, further away from the center, thereby changing the timing period by changing the speed with which the cam "201" rotates.

In other words, the adjustment of the position of the motor "200" toward the disk, toward the axis of the cam "201" speeds up the rotation and gives a shorter time period during which the one revolution occurs.

As the motor is moved further outwardly away from the axis of the cam "201" the time period is lengthened during which one complete revolution is made by the cam.

(Testimony of Harold W. Mattingly)

In the new Fawn game the start of the game is made by operating the reset handle indicated at "207" [258]

The play goes on during the time period fixed by the time clock, which is the motor "200" and the cam "201"

A winner may be made on any of the boards, and the making of a win does not affect the operation of the rest of the games. They continue in operation, and there may be two, three, or more winners during the time allotted by the time clock.

At the end of the given time period the timer will arrive at the position where the notch in the cam allows the switch "205" to be opened, and that will open the circuit, open the power circuits, irrespective of whether there has been a win or not.

Q. How is the game restarted then?

A. The game is then restarted by the operation of the reset handle to again reset all of the paddles or switches on the individual boards; and at the same time, restarting the time clock motor, and simultaneously reclosing the main switch "110".

I think it would be probably wise to explain that the reset handle is on a long shaft that extends underneath all of the games in the set.

At each of the games the reset lever on the mechanical mechanism here is connected to that reset shaft so that when the reset shaft is rotated the lever is pulled backward. That forces all of the paddles back to their original positions [259] and pulls the win bar back to its original position behind all of the little combination pins.

Q. When the time clock opens the switch "110" that is all that is necessary, isn't it, for locking out or causing the non-winners to go dead?

(Testimony of Harold W. Mattingly)

A. Would you give me that question again, please?

(Question read by the reporter.)

The Witness: That is correct. I might add that there is one other feature I overlooked, and that is that in the new Fawn game the win lights at the top of the annunciator board, which have previously been used in the old Fawn game, are not used in the new Fawn game, and there is no way in which a winner is signaled. The only way that you can tell who is a winner is by looking at all the boards to see who has a full row of lights on the annunciator board.

Q. You have examined the Fawn games at Long Beach, have you not? A. Yes.

Q. Recently? A. Yes.

Q. I believe you were present with the gentlemen of the opposition last week?

A. Yes, it was Friday afternoon.

Q. Would you tell us just one more thing, and that is the process or mechanism for restarting the Gibbs apparatus? [260] I don't believe you had a chance to cover that this morning.

A. In the Gibbs patent, if I can refer to Exhibit B I think it is best illustrated.

Q. That is this blow-up of Fig. 8 with Fig. 10 consolidated.

A. In the Gibbs patent it will be recalled that the relays "R" on each of the boards, which have been energized, have closed self-holding circuits to hold themselves energized. So that at the end of the game and when they get ready to restart the game, it is necessary to de-energize all of those relays that had been operated and to accomplish that the patent provides a main power switch "68"



(Testimony of Harold W. Mattingly)

which the operator of the games must open and keep it open for a moment and then reclose it.

When he opens the main power switch "68", of course all of the relays "R" that have been energized on any of the boards will immediately be de-energized. As a matter of fact, at that time the only relays that will be energized will be those that are on the board. And then the reclosing of the switch "68" re-establishes the power circuit to each of the game boards, allowing the game to start.

The patent also describes that when it is time to restart a game the operator of the games, having opened the switch "68" and reclosed it signals the fact that the game is ready to restart by operating a switch to ring the bell "69". [261]

Mr. Fulwider: I believe that is all.

Mr. Huebner: I have just a few questions, your Honor, for the record.

### Recross Examination

By Mr. Huebner:

Q. Mr. Mattingly, in the older Fawn game about which you have been talking, what constitutes a winner?

A. The winner is constituted by each person or each game on which there is established a row of five lights, either horizontal, vertical or diagonal.

Q. That is just the same as in the original Fawn game and in the Gibbs patent? A. That is correct.

Q. You mentioned that in the altered Fawn game there was no way to tell a winner.

A. I say there is no—

Q. Did I understand you to testify that a winner is one that gets five in a row? Can you give any further

(Testimony of Harold W. Mattingly)

explanation of your statement that there is no way to tell a winner?

A. I think my statement was that there is no way to tell a winner, except by looking at the game board and noting that there was a row of five lights lit on the board.

Q. I see. Actually the way this altered game operates, [262] you heard the slightly excessive noise of one of the relays when there was a winner formed, didn't you?

A. There was a click that we heard when the relays that we were playing with went over.

Q. Well, those are the ones that are on the game as actually used, are they not? A. Yes.

Q. All right. And also when a winning row of lights was completed, the way the game is played down there, did you not see a flicker of the winning row of lights?

A. Yes, there was a flicker of the lights.

Q. And after the flicker the winning lights remained on constantly until the game was over?

A. That is right.

Q. All right. Now, this timer thing that they have on it down there, just could just as well be replaced with a mechanical alarm clock that had a switch arrangement on it, could it not?

A. If you mean that the electric motor drive could be substituted by a mechanical alarm works, yes.

Q. Your Exhibit J that you used for illustrating your comments has a great deal of wiring and lines down in the lower right-hand portion of the sheet.

Most of that material below the center of the sheet, in fact, most of it below the center of the sheet is actually part [263] of the timer, is it not, this electrical timer that your people designed?

(Testimony of Harold W. Mattingly)

A. Yes. In fact, I believe that all of that mechanism and the wiring which is shown below the center of that sheet with the exception of the circuit wires going to the reset bar is located right in the timer box at the end of row of machines. The main power relay "111", that and the reset bar, are the only ones that are outside the timer.

Q. As a matter of fact, then, Plaintiff's Exhibit 9 is a correct illustration, is it not? A. Exhibit 9?

Q. Yes.

Mr. Fulwider: You mean Fig. 9?

Mr. Huebner: Well, it has got a figure 9 on it, but it is—

The Witness: Do you mean Fig. 9?

Mr. Huebner: Wait a minute. I will show it to you.

Q. Exhibit 9 is the one I am talking about. It does happen to have a figure 9 in the right-hand corner. Isn't that a correct showing?

A. I haven't had an opportunity to check these dotted line circuits that are shown in the dotted circle marked the timer on Exhibit 9; but as far as I can tell from a quick glance, that is a correct illustration.

Q. Well, look at it long enough; just long enough to [264] be sure that it is right.

A. One error I have found up to the present time is that the circuit used for energizing the relay coil "111" and the parallel circuit to that leading to the motor "200" is shown under the control of an auxiliary relay "106" and the armature contacts "112."

That is incorrect, since that switch does not control the circuit to either the motor, the timing motor, or the main switch "111" in the new Fawn game.

(Testimony of Harold W. Mattingly)

Q. Yes. But the physical elements are still present in the device down there, are they not?

A. Do you mean the physical relay "106"?

Q. Yes.

A. And the switch is still there.

Q. It is still there?

A. But disconnected from effective operation of the coil "111."

Q. Yes. But does not Plaintiff's Exhibit 9 show the correct present wiring arrangement?

A. No. If you will remove the wire "300", if you will remove the wire "300" I believe that your circuit, so far as that phase of it is concerned, would be correct.

Q. That is all you would have to do to make it correct? [265]

A. On this print that I have before me, there is a conductor that connects to one of the wires leading to the timing motor 200, which is not clear. I don't know what that wire is.

Q. The connections to motor 200 are 110-volt house circuit, aren't they? Haven't they chosen a house electrical motor to drive this timer?

A. I do not understand the question.

Q. The lines that go through drive the motor are ordinary 110-volt house lines, aren't they? A. Yes.

Q. Handle 207, in your Exhibit J, was present on the original machine, isn't that true?

A. The reset handle?

Q. Yes. A. Yes.

Q. It is identical, physically the same thing which is identified as 41? It is called 41 in Plaintiff's Exhibit G, that same diagram you were looking at a moment

(Testimony of Harold W. Mattingly)

ago? In other words, 207 and 41, according to these different numbers in the respective exhibits are the identical thing?

A. They represent the same things.

Q. You say they represent the same thing? It is the same in both the original and the Fawn game?

A. If you mean by that the handle for the reset is [266] the same in the old Fawn game and the original, the answer is yes.

Q. As shown here, they tend to show the same thing?

A. That is correct, they tend to show the same thing.

Redirect Examination

By Mr. Fulwider:

Q. With respect to the solinoid 106, of Figure 9, with its associated switch 112, while that remains physically in the game it has no function, does it, in the new Fawn game as pleaded?

A. No, it performs no function, and the wire 300 I believe has been completely cut from that relay?

Q. And the wire 107 can be cut off and the relay removed bodily, and you still would not have any difference in the operation of that new Fawn game?

A. That is correct.

Q. What would your testimony be as to the purpose, if any, of that relay 106, and 112, as to why it was there? Is there any reason for having it there?

A. It was merely there in the box, because somebody had not taken the time to use a screw driver, and take it out of the box. They intended that as a main switch.

Q. It had no function whatsoever?

A. It had no function at all.

(Testimony of Harold W. Mattingly)

Q. So that the coil 111, which operates the main [267] switch 110, was not connected through a relay such as 112 and 106, of Exhibit 9, but is connected to one of the relays inside the timer, as best illustrated in Defendant's Exhibit J, is that correct? A. Read the question.

(Question read by the reporter.)

A. That is correct. It is connected to one of the relays in the timer, namely 161 and 151 in the timer, and those relays control the operation of that main switch 110.

Q. Referring now to Exhibit 9, you could trace a line I believe, could you not, from the coil 111 into the timer and relay 160, is that correct?

A. There seems to be a line 114', 232.

A. No, the conductor 232 is merely a power take-off from one side of the main 110-volt power source just above 75.

Q. That is my error. I did not see that.

Q. So that, so far as Exhibit 9 is drawn, the relays shown in the dotted line 150 and 160 have no function as drawn, do they?

A. No, as long as the relays 106, 112 are connected in that circuit the other relays have no function.

Q. At least they have no function insofar as the main switch goes? A. No. [268]

#### Redirect Examination

By Mr. Huebner:

Q. Examining J. Figure 4, the blade switch of the actual machine or game on the Pike has the same switch as Plaintiff's Exhibit No. 9, the double-bladed switch?

A. Yes, that relay has two switch members on it, but the circuit connections have been so changed that one of the switch blades is no longer effective.



(Testimony of Harold W. Mattingly)

Q. Referring again to Figure 9, which is this diagram, you said that in the altered game at 300 the line is disconnected from the switch 112? Is that what you said? A. Yes.

Q. If you reconnected that line at the point 300 to switch 112, the Fawn game would work exactly as it did before, and the clock would simply run on and on without effect?

A. The way these are illustrated, every time the relay 106 operates it would stop the clock.

Q. But the clock itself would not have any control?

A. No, I believe the way this is illustrated, with the wire 300 on it, all the games would be stopped whenever the relay 106 is energized, just as in the original Fawn game.

Q. Just as in the original Fawn game—that is all.

Q. By Mr. Fulwider: As long as you are on the matter of switch 84, isn't it true that switch 84 is a two-bladed switch, and it is still there; if I understand correctly, it [269] is not wired up, as shown in Exhibit 9, but wired as shown in Exhibit J?

A. That is correct.

Q. So Exhibit J, according to your observation of the machine, is a true and correct wiring diagram of the new game switch, only the switch 110, closed as it should have been, is shown in the same position with the blade 150 and 160? A. That is right.

Q. Using the switch with a blade 84 and the associated wiring as shown in Exhibit 9?

A. That is correct, because that is predicated on two blades, and only one blade is used.

(Testimony of Harold W. Mattingly)

Mr. Huebner: Why does counsel put language into the ears of his own expert witness? I have not objected to a lot of leading questions, but it seems to me it is encumbering the record too much.

Mr. Fulwider: Under the circumstances, I thought it would speed up things. I will re-frame it, but you brought up the questions of the switch.

Q. So the record will be clear, would you state in your own words exactly what the switch in the new Fawn does, and why?

A. In the new Fawn game the switch blade 109, although it is physically still present, performs no function, [270] because it has been disconnected, and does not energize the conductor 108 leading to the coil 106. In the new Fawn game that switch blade and its function are not used and only switch blade 84 is used to transfer the circuit from one power line to the other.

Q. By Mr. Huebner: I want to ask just one question in view of that. Is it true that every wire, every line shown in Plaintiff's Exhibit 9 is physically present in the so-called altered Fawn game? I say, physically present; maybe it isn't wired exactly the same; maybe a wire has to be changed six inches from one place to another, but isn't it physically present?

A. If you mean are the wires under the board, yes.

Q. In the game, in the unit?

A. No, they are not in the game, but they are disconnected.

Q. They are still physically present in the apparatus?

A. Yes; that is true. The metal, with its installation of it in there, are not connected.

Mr. Huebner: That is all.

TODD C. FAULKNER,

called as a witness by and on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows: [271]

Direct Examination

By Mr. Fulwider:

Q. Mr. Faulkner, has there been any change in the volume of your business since you changed from the old Fawn game to the new Fawn game? At 101 West Pike, Long Beach? A. Yes.

Q. What change has there been in the volume of your business?

A. It has brought a considerable amount; more players, sir.

Q. You have had more players since you changed to the new Fawn?

A. We have almost twice as many.

Q. Have you had any complaints from any of the players relative to the new Fawn game?

A. No, sir; they like it better.

Mr. Fulwider: That is all.

Mr. Huebner: No questions.

GEORGE HATHERELL,

called as a witness by and on behalf of the defendant, having been previously duly sworn, was recalled and testified further as follows:

The Clerk: You have been sworn before?

The Witness: Yes. [272]

Direct Examination

By Mr. Fulwider:

Q. I am sorry. There is a question I wanted to ask of Mr. Faulkner, if he has any intention of resuming

(Testimony of George Hatherell)

or going back from the new Fawn to the old Fawn.—

Mr. Faulkner, do you have any intention of going back from your present form of Fawn game to the old form, which you used prior?

Mr. Faulkner: No sir.

Q. Mr. Hatherell, have you had occasion during the last four months—I will put it this way: Have you been at the address 101 West Pike, during the last four months, and had an opportunity to watch the playing of the Fawn games there? A. Yes, I have.

Q. Have you been there frequently?

A. Three or four times a month, probably.

Q. Were you in the premises about that often prior to that time? That is, during the existence of the Fawn game? A. Yes.

Q. Can you tell me whether or not from your observation there has been any change in the number of players in the premises prior to the new game and subsequent to the installation of the new game?

A. Since the new game was started there has been at [273] least twice as many, and during a good part of the time I have been there there have been more than twice as many.

Q. You have seen those yourself?

A. That's right.

Q. Have you ever heard any comments, favorable or unfavorable, with respect to the new game?

A. I have heard some comments, that they liked it very well.

Q. In your observation of the play of the new Fawn game have you ever seen an occasion when there was more than one winner? A. Yes, sir.

(Testimony of George Hatherell)

Q. What was the maximum number of winners you have seen on a given game? A. Three.

Q. Have you ever seen a situation where there was no winner? A. Yes.

Q. Has there ever been a situation where they have gone for several games without a winner, and then had a winner? A. Yes.

Q. Has there ever been a case where after having gone through several games without a winner, then there were several winners?

A. That is usually the case. [274]

Q. How long does the clock operate on the new Pawn game? A. About a minute and 45 seconds.

Q. I don't know whether I asked you this or not: What is the maximum number of winners you had occasion to see on the new Pawn game?

A. You asked me. The answer is three.

Mr. Fulwider: That is all.

Mr. Huebner: No questions.

The Court: Anything further?

Mr. Fulwider: We have no further witnesses. I would like to check the matter to see if we have got all the evidence in.

(Short recess.)

The Court: Is there any additional testimony you desire to present?

Mr. Fulwider: The defendant rests.

Mr. Huebner: No rebuttal, your Honor.

(Whereupon, an adjournment was taken until Monday, February 24th, 1947, at 10:30 o'clock a.m.) [275]

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
(Partial)

Los Angeles, California, Monday, February 24, 1947.  
10:00 A.M.

Mr. Huebner: Whether or not the circuits of Chester could be adapted to Gibbs by re-arrangement and addition is inconsequential. These game patents are directed not to electric circuits per se but to games having certain physical elements operating to produce a given result, and the electric circuits and the mechanism and means utilized are those chosen by the skilled electrician or mechanic to reduce the inventive idea to practice.

Therefore, as an illustration of that, if your Honor will refer to Claim I of Chester, which I will read, you will find the following:

"A game, including, in combination, means for producing a beat."

That means a musical beat.

"a number of competitive units, means individual to each of said units for manually operating the same in registry with said beat, and means for indicating the correctness of such beat."

There is no claim of any single circuit or electrical device. That is a claim on a game. That is what all these fellows were striving for. Nothing could be more obvious to demonstrate the distinctions between Chester and the Gibbs [2] inventive concept.

The Court: I think we have all of us the same thing in mind. We are not dealing with an electrical apparatus. We are dealing with games. Therefore, the distinction which might be introduced if you deal with a new flat



iron, or a new toaster, or anything else, is subordinate in this case.

In that case, that would be important, because you are dealing with an electrical device or apparatus. Here you are dealing with a game. So that underlying the whole thing is not so much a differentiation between small details which might be important, in a strictly electrical device, which is used for the purpose of producing heat, but would become unimportant here, because the ultimate consideration is: What did the game try to achieve which was not in the prior art?

I think that is conceded. At least Mr. Mattingly conceded it, although Mr. Fulwider in his argument did not stress it. Mr. Mattingly conceded it, but insisted on the advantage of shutting off the game when one player has one win, which exists in the Gibbs case, and which is eliminated in the other games where a player plays not against another player, but against the limit arbitrarily set by the operator of the machine.

That is what caused the discussion between Mr. Mattingly and myself. I told him to get away from small differences, and get down to essentials which led him ultimately to admit, [2] with that possible exception, which is of little merit, the result is the same in both, in that actually the changes were deliberately made. He set out deliberately to make a few changes in switching so as to get away from the set-up. But the result, with that one distinction, is identically the same.

Incidentally, I found the opinion that I wrote, but unfortunately it is a memorandum opinion. I said it was a gambling machine, which violated the Los Angeles ordinance. I don't know what the Long Beach ordinances

are, but it was not described sufficiently to be of any assistance here.

Reading from page 204, line 10, I said: (Trans.)

"You know very well, of course, that these people went out and copied this thing, and the only deviation they made is either on a lawyer's advice or technician's advice as to how to get around it. Is that not a fact?"

"The Witness: The way to avoid the patent, yes."

"The Court: That is right."

"Mr. Fulwider: Did you answer that question?"

"The Court: Yes, he answered that. I shall declare a recess."

So, I think, considering this, we have to bear in mind the scope of the patent, and its history in the Patent Office is important as bearing upon the scope of the invention, and (4) nothing more. Many times it is decisive. You will remember the shoe cases. You were in both.

Mr. Huebner: I was for Joyce in both of those cases.

The Court: You will remember in that case I limited the patent to include the sole, because the history of the proceedings showed clearly that all broader claims had been rejected because they operated to show there was none. He introduced Chinese customs to show platform shoes.

Here the entire attack is against No. 3, and yet No. 3 comes out unscathed, with the only suggested change being two words after the first "means," which Mr. Fulwider read. The only change that the Examiner suggested was striking out the words "means for maintaining an open circuit to all groups." He struck out "means for maintaining" and said "an electrical circuit common

to all of said groups and open until all of the indicators in one of said groups have been energized."

Mr. Huebner: Merely a correction of form, and not of substance.

The Court: In the same article which I talked about, I ridiculed the idea, as I have in various other opinions based upon decisions of the higher court, that you can solve a problem in patent law by merely showing that something reads on something else. But over the week end I have been trying to see what claim of Gibbs can be read on Nakashima, and I find [5] none. I tried to find what claim can read on Chester, and I can't find any.

Mr. Huebner: Nor on Wallace.

The Court: Without eliminating about half of the language of any of the claim here, especially 3. You would have to eliminate almost half of it to make it read on them. That, of course, is not decisive. But if you use it at all, it works both ways.

Mr. Mattingly was fair enough in saying he did not claim that all the elements are in Nakashima. He thought if you would combine Nakashima and Chester you would get it, but it is not good patent law.

What I am interested in is to determine what different results are achieved by these few deviations, other than the one result. There is one result that cannot be denied. I did not ask Mr. Fulwider this question, because I had no chance, but he was talking as to specific things, while I insisted on finishing the case promptly.

When it comes to argument I don't stand on any ceremonies about opening and closing. I prefer to sit here and talk until we feel that everything that is in my mind has been exposed to counsel. But, as I remember his

case, that was the only result achieved. Instead of an automatic exchange of lights which stops all plays, except the winner, his game goes on up to the minute and one-half, and there is a [6] possibility that in the meantime another player might win, which is impossible in your game.

If that different result is a sufficient deviation in the new game to say he achieved a different result, because in your case he loses but once, while in his case he takes a greater risk, because two players might possibly win in a minute and a half.

Mr. Huebner: In our game, there could be two or three winners—it doesn't happen often, but if two or three have been achieved, the rows light almost at the same instant. They would all be winners and the others would be losers. In their case it is true there may be two or three games played, if you can call it a game when they allow a certain time limit. While there may be several games that run along, perhaps two or three winners get the prize, and then there will be several games which run along where there won't be any winners at all. There is nothing accomplished by the time-clock.

The Court: I have in mind the principle you also have in mind, if a different result is obtained which is substantial then there is no infringement, and if that result in the game is important, the question arises. That is why I think the question I have discussed should be more properly directed to you. That is the fundamental distinction, that while there is a possibility that several persons may win, [7] and also the possibility that no one might win in his game, while your game goes on until somebody wins. So here are two differences in rest.

His game stops automatically after a minute and a half. Your game goes on until somebody wins. So there is a possibility of it costing him nothing, so far as that particular game is concerned, while you have to go on until somebody wins. You can't stop until somebody wins.

Mr. Huebner: That is right, but we may have more than one winner. When the game is made, if the winners come out almost simultaneously relays operate in such a way that one, two or three winners can be present, and then the game stops.

I don't think there is any difference. It is merely an interruption. From a patent standpoint there is no difference in substance, whether you stop a game after the first winner or a group of winners simultaneously have achieved a win, or whether you run along and repeat two or three times until a winner comes along. A winner comes along, and gets paid five times, we will say, as much as through the original game. From a commercial standpoint it does not make any difference.

In both games there is a combination of five lights. I am talking about the altered Faulkner game, and in the Gibbs game there is a combination of five lights. In both games that is the ultimate result. That is the important result: [8] a combination of five lights, horizontal, vertical, diagonal,—lighting up, whether one man gets it, two or three, it doesn't make any difference, because the play is continuous, from 10:00 o'clock in the morning, or whatever time it is, until midnight or 2:00 o'clock the next morning. They all have their chance at it.

Our feeling is that this introduction of a timeclock in the circuit is a mere shallow subterfuge to confuse.

The result is just exactly the same, because when one or two winners get five lights in, they win the game or the games!

In view of the comments your Honor made, I won't go into any detail on the third patent, the Wallace patent.

The Court: There are two things I am absolutely convinced of. First, that Gibbs has invention over the prior art, and that the one Mr. Mattingly called his best reference, Nakashima, was before the Examiner, and on that basis it was rejected.

Nakashima had gotten it in 1927. It was an obvious reference. Nakashima, I think, was an American citizen, or at any rate he was a resident. I think Higuchi is given as a citizen. How would you read claim 1?

"In an amusement apparatus playing table, recesses in the table comprising a target for the played ball, certain of the recesses visibly distinguishable from the remainder being designated as prize-winning recesses, [9] each a prize-winning recess being provided with a contact which is adapted to be closed when a ball is positioned in the recess, a plurality of signals operable to display a visible prominent signal, there being as many signals as there are prize-winning recesses, a plurality of circuits, each circuit comprising one contact and one visible signal, a relay operable when a plurality of visible signals are positively displayed but non-operable when a single visible signal is positively displayed, a circuit common to the relay and all of the visible signals, and an audible signal operable under control of the relay."

That can read to correspond to the original first six claims, which were disallowed on the very Higuchi patent. But he allowed claims beginning with what is No. 7, and



even in allowing the present 3, which was No. 9. The Examiner did not base it on any claim of similarity to the other. He said:

"Claim 9 is objected to as being indefinite beginning with line 10, in that the circuit mentioned is indirectly introduced."

So all it required was a change of language, and it was allowed.

Mr. Huebner: And in construing claim 3, for example, there was a patentable difference to be recognized between claim 3 as allowed, and the claim he talked about,—a [10] separate relay for each light, the relay having an armature. That is not found in claim 3. The corresponding claim in 3 is "means."

The fact is the Examiner allowed a broader claim which called for means. That could be either relays in Gibbs, with the armature, or it could be the switches of defendant's device. So claims 3 and 6 are broader than claims 1 and 2, and 4 and 5, and were intentionally written that way and intentionally allowed by the Examiner over Nakashima.

As far as claim 6 goes, the language there is broad. Apparently the crux of the situation is whether the defendant's altered device comes within the last six or eight lines of claim 6.

The Court: Which device?

Mr. Huebner: The altered Fawn game.

The Court: Are you charging infringement of all?

Mr. Huebner: We charge infringement of claims 3, and 6 to 10. We skip 1, 2, 4 and 5.

He has in the last part the broad word "means." Reading from page 6 of the Gibbs patent, beginning at line 10:

"means whereby when all of the indicators in any group in any one of said units have been operated to complete a winning play, the indicators on all of the units except the winning unit will be deenergized."—

That occurs in the altered Fawn game. [11]

"while the indicators at the winning unit will remain energized, for the purpose described."

That occurs in the altered Fawn game. The results are there. There is a little deviation, the frequency in which it takes place, but it is insignificant. It is still within the spirit and intent of this claim.

The Court: I don't quite get the trend of your thought. It seems to me that the latter part of that claim, the wording would not be read on the altered game, as you call it, the new game, because there is no deenergization, deenergization does not occur, because the game goes on. In other words, in the second game, if the person win, the play goes on until the clock strikes, while in your game automatically the other players are left out in the dark, as it were, and the game stops.

For that reason, I can't see how this latter part can be said to be anywhere read upon it. If I understand correctly, the word "deenergized" means that the electrical current which had operated on these units is off, or momentarily it does not have any effect.

Mr. Huebner: I would like to discuss that for a moment, if I may. In this altered Fawn game there may be, let us say, because there isn't always, a time delay between the showing on a winning board of the lights in a row, and the cut-off of all the non-winners, whether the winner occurs simultaneously [12] with the end of the time cycle, or whether he does not, the winning lights

stay on the board, even after the timeclock has run its course.

The Court: That is true. They stay on in your game, but in your game the others cannot play any longer, because their energy is cut off.

Mr. Huebner: That is true; their energy is cut off when the winning unit is achieved.

The Court: In his case the others can't go on. It is deenergized. Therefore the second elements of claim 6 are not in the altered Fawn game.

Mr. Huebner: The winners in the altered Fawn game stay out, but the non-winners all get off; they can't play any more. The only difference is there may be a short time delay. It is insignificant sometimes.

The Court: I would call that special playing. In one case, when the row of five has been achieved, the remainder of the board is deenergized. The other players cannot play any more. That is done automatically. Then, until the man in back pulls a lever, or whatever he has to start the game all over again, and sends the winning five balls back to their pockets, is there a game. The completion of one row has no effect of deenergizing the other playing units.

Mr. Huebner: Not until the timeclock has completed the cycle that it does. [13]

The Court: There you come against another principle. That is the point I was talking about when I read from the opinion in the Holmes case, and from the other case, where I had the identical point. That is where you substitute a manual operation for a mechanical operation. For instance, the shop operation which achieves the same result by bending a piece of iron in the mechanical oper-

ation would achieve the same result.<sup>2</sup> You have substituted a new element which is not interchangeable under the doctrine of equivalents.

Mr. Huebner: I am not talking about a manual substitution.

The Court: This is a manual substitution, because the signal is given by the clock outside. I use that as an illustration, because that is one of the examples of a substitution which is not within the doctrine of equivalents.

Mr. Huebner: May I try to make my point clear? I don't think I have it properly expressed. In the Gibbs patent, when there is a winning combination, a relay operates and that cuts off all non-winning circuits, and leaves the winning circuit on. In the original Fawn game, exactly the same thing happened.

The Court: Let us leave that out.

Mr. Huebner: I need to take it step by step to get the thought expressed. The original Fawn game does that same thing. The altered Fawn game does exactly the same thing. [14] Merely with the means of a clock that action is deferred, sometimes, not always, but it is deferred if a winner is delayed until the timeclock is run to the end. I would say that down there the winner comes in the same instant the game is cut off by the timeclock. They have set it one minute and three or four seconds, probably, because that is the average time.

The Court: The man who operates the clock in back stops the game.

Mr. Huebner: He does not operate the clock. The clock goes on by electricity.

The Court: The clock stops and starts the game?

Mr. Huebner: The clock stops the game, your Honor. That is what I have not gotten over, I guess. The clock itself cuts the circuit, because when the clock gets from here to here, it is a minute and three-quarters. It is the timeclock that operates the same electric circuit that cuts off the non-winners. In the old Fawn game—

The Court: That is an element you don't have in yours? Something outside and altogether added?

Mr. Huebner: It is stuck on to make it look different. That is all.

The Court: Adding another element. If you subtract an element, it is all right, but adding another element, which does not achieve a different result, does not avoid infringe- [15] ment, provided, of course, that no different result is attained.

We always have the classical example of aspirin, which was a poison until somebody conceived the idea of changing the quantities and making a drug of it. The court held it was invention, because the man had blended it in such quantities that the human system could stand it.

I am directing myself not to the entire problem, but to this particular problem. I will put it this way, in non-electrical terms: The deenergizing takes place at a different time, and is not done automatically by the instrument itself, but by means of a clock, and at a future which is a lapse of time depending not upon one winning alone having been completed, but a lapse of time depending upon an arbitrary time limit set by the operator.

I have expressed it non-electrically, but it does seem to me that the addition and changing of results make it clearly inapplicable. In other words, here is your danger: If you take a thing that achieved a different result,

does it on a time basis, and does it by adding a new electrical apparatus which operates outside the machine, although it is connected with it, and you claim it is within the description, you are falling into the very pitfall which the Supreme Court adverted to in the Halliburton case, where you are claiming too broadly, and your claim becomes too broad by [16] reason of indefiniteness.

In that case, you will remember, they tried to achieve certain results. They tried to have a device that would indicate what happens down in an oil well, and this man clarified it, but he claimed later on that an entirely different device achieved the same result with his, and the court, with only one exception,—that is, the dissent by Justice Burton who did not indicate his ground for dissent, said if that were true, in the present state of science, anyone who might, within the light of the patent, devise something achieving the same result in a totally different manner would be barred. And the court said:

"And unless frightened from the course of experimentation by broad functional claims like these, inventive genius may evolve many more devices to accomplish the same purpose. Yet if Walker's blanket claims be valid, no device to clarify echo waves, now known or hereafter invented, whether the device be an actual equivalent of Walker's ingredient or not, could be used in a combination such as this, during the life of Walker's patent."

Mr. Huebner: In regard to the Halliburton case, the original idea was an echo timing proposition, where there is a device at the top of the oil well that sounded the echoes down at the surface of the oil. The time it takes [17] the echo to go down and come back is computed for technical purposes. That was prior art.



Then the original inventor came along and put a resonator on top of the oil well, which is to be according to the relationship in length to the tubing stops and joints in the oil well, and that resonator improved the facility for reading the echo device. The resonator was not new. Halliburton's was not a new combination, but some little improvement over the old combination. The art was overcrowded.

The Court: In that case somebody changed his mind, because one judge was absent. It stood four to four. When Judge Jackson came back they reheard it. Evidently one of the four stood by his prior opinion, which was perfectly all right. That's what judges are for,—to change their mind, if you can show that they are wrong.

Mr. Huebner: The Supreme Court said—I will quote the words:

"Petitioner was working in a field crowded almost if not completely, to the point of exhaustion."

The invention in Halliburton was so narrow, there was nothing to it. We have given a new game. Maybe, in the advance of science we have not contributed a great deal. But we have a game which the law allows, and the Patent Office recognizes. It is a new game, so we don't fit into the interpretation in the Halliburton case, but we are entitled to [18] construe the claims broadly. The fact that the defendant puts a little time delay between the appearance of the winner and when the game is cut off does not go outside of the general language and intent of claim 6.

The Court: All right. That's your view.

Mr. Huebner: He infringes claim 3 anyhow.

The Court: The timeclock might fit into the last words. Many a time, when you thought I was on your side, in a few days, when I have gone over the matter I have given a decision the other way. All of you have practiced a long time before me. I often tell you not to claim a vested interest in anything I say in a lawsuit. That is true of most judges, because many questions are hard to clarify, and that's why I like to have you argue orally.

Mr. Huebner: In claim 3:

"supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

The Court: That might cover the clock.

Mr. Huebner: That might cover the clock. It could also cover, your Honor, the wiring and the use of the solenoid, which I think is numbered 98. But, anyway, the solenoid changes the circuit. There is a sound audible to anyone at the finish. The wiring change is a supplementary means, and he has got that in the altered machine. I think that is the [19] only thing left open on claim 3 we had not discussed.

The Court: Have you finished?

Mr. Huebner: Yes.

The Court: I want to ask one or two questions, because of the strictness with which the Circuit Court has applied findings. You are all familiar with the rules that they have established, requiring findings, even in a non suit. In fact, they have untaught me more law than I ever taught you boys in school, on pleadings than any other subject. For instance, they promulgated the rule which says if you haven't got a case you have to

have findings. They have been very strict in the requirements of findings in any sort of judgment. I want to ask one or two questions. You don't need to answer them. I want to know if you still assume the defense that there is evidence to prove invention by others. You don't have to answer if you don't want to.

Mr. Fulwider: I am very happy to answer. I don't believe, your Honor, and I did not believe when I brought the witnesses in, that we had proved invention. They were brought in more to show what they told me that there was mechanical skill involved. I thought that was pertinent to the issue.

The Court: In your amended answer you pleaded that as one of the grounds. That prompted my question,—whether you were going to charge that he falsely claimed the [20] patent as his own. I will have to make findings on it. I think the evidence is of a character to warrant a finding that Mr. Gibbs is the inventor, and that neither of those people had anything to do with it. Both of them were frank enough to say, in answer to the direct question of mine, that they did not claim any part in it. One said he gave the time and he paid him \$20.00 for his trouble. The other man said he looked upon him as a prospective customer, who was not very profitable to him, but he did not know the game; he did not even hear of the Bingo game until a year afterward.

At any rate, I want to make certain on that. I feel the evidence does not measure up to the claim in the answer. On the contrary, it clearly shows the person therein named as the possible inventor disclaims any right in it, in that he merely lent his electrical skill to one who wanted to invent the game. That he did not know about it at all. It was the game he was trying to electrify.

Mr. Fulwider: We did not know of Mr. Porter until quite late. The same is true of Mr. Cannon, whom we thought might be a joint inventor. We can withdraw the defense.

The Court: You don't need to withdraw it. Porter's testimony shows clearly he was employed by Graybar, and when Mr. Gibbs came to Graybar he had a sort of sketch, which Porter reduced to more definite terms. He said they could not make it. They were not interested in making that kind [21] of apparatus, and he referred him to Cannon. I presume he took away the sketch, and he gave him a gratuity of \$20.00, which was all right. Porter is a skilled engineer. He has a bachelor's degree in electrical engineering. I don't think you cross examined him. I asked only one question of him.

Mr. Huebner: I did not cross examine.

The Court: In the course of his examination by Mr. Fulwider, the witness Porter testified?

"Q. In the course of your activities for Graybar, at that time was it part of your activities for you to give advice to prospective purchasers of equipment?

"A. That is true.

"Q. As a result of this conversation did you perform any services for Mr. Gibbs, make any drawings, or wiring diagrams, or give him any advice?

Then there was some conversation. I said I was not interested in arguments, and maybe this gentleman was going to claim to be the inventor. I said,

"Let us find out. Maybe some 16 years after a person has an invention, and no interference has been given, then all of a sudden a new lawyer discovers something. It is not pleaded. The only pleading is as to Cannon as the inventor."

The witness asked for the question, which was repeated, and he answered: [22] "A. Yes, I did.

"Q. By Mr. Fulwider: Will you state what services you performed for Mr. Gibbs?

"A. I made a wiring diagram of one single unit of the game.

"Q. How complete was the diagram?

"A. I would say it would do the job satisfactorily.

"Q. Was the layout of that diagram your own design?

"A. It was the application of standard relays to what was to be accomplished, yes.

"Q. Did Mr. Gibbs give you any technical assistance in laying out these circuits?

"A. No, he did not.

"The Court: How much did you charge him for doing the work?

"A. I did not charge him. He paid me \$20.00.

"Q. In other words, a part of your job was to give advice of this character?

"A. That's right.

"Q. You couldn't charge for the company, and he gave you a gratuity of \$20.00?

"A. That's right.

"Q. You did not feel that you had invented it, because anyone skilled in ~~electricity~~ could have made the layout, provided he was told what was to be [24] accomplished, is that correct?

"A. That is correct.

"Q. By Mr. Fulwider: I would like, just to tie in the testimony, your Honor, to show the witness a copy of the Gibbs patent. I show you Fig. 6 of the Gibbs patent in suit. Does that diagram look familiar to you?

"A. Essentially, it looks something like the diagram I made.

"Q. It has a similarity to that diagram?

"A. That is true.

"Q. Did you employ a separate relay for each of the lamps?

"Q. Yes, we did.

"Q. Do you recall whether or not you had a relay in the win sockets which lit up a signal lamp for that particular unit?

"A. We did.

"Q. Do you recall whether or not you had a lock-out relay which locked out the other units when a win was accomplished on one of the units?

"A. I don't remember that.

"Q. I call your attention to Fig. 1 of the patent. Does that portray, to the best of your recollection, a general illustration of the game about which Mr. Gibbs spoke to you? [24]

"A. It does.

"Q. Did you ever see subsequently a game built which was generally similar to Fig. 1 of the patent?

"A. Yes.

"Q. Where was that?

"A. Long Beach, I believe.

"Q. Do you know what it was called, the name of the game?

"A. Fascination, I believe was the name of the game.

"Q. Do you remember what you did with the drawings or wiring diagram, rather, that you made for Mr. Gibbs at that time?

"A. As I remember, I left that with Mr. Cannon.

"Q. You had a conversation with Mr. Cannon, I presume, about the game?

"A. That's right.



Q. Can you tell us in substance what the conversation was?"

Then there was a discussion. I sustained the objection on the ground that it did not show he was Gibbs' agent to communicate with Cannon. Then:

Q. By Mr. Fulwider: Did you have any further conversations with Mr. Gibbs relative to the wiring diagram that you made for him?

A. Not as I recall. [25]

Q. Other than the time when he paid you for it?

A. That is right.

Q. I believe you answered, in substance, this question, in response to a question of his Honor's: "Was it your thought that you had invented anything when you made this wiring diagram for Mr. Gibbs?"

A. No.

The Court: You never conceived ideas of any electrically controlled Bingo game?

A. I did not.

Q. If I came to you and told you I wanted a certain electrical apparatus in my house,—say, for instance, I wanted a place, if I would go to my library in the living room, I could push a button, and it could be seen on the second floor of my building, you would apply your electrical skill to devise by ordinary methods the means to accomplish it?

A. That is correct.

Q. So you did not know the Bingo game?

A. That's right.

Q. He said he had an idea, and he wanted an electrical apparatus to perform the idea, and you did the

work he could have got from anybody else electrically skilled?

"A. That's right. [26]

"Q. The idea he had in mind was his?

"A. That's right.

"Mr. Fulwider: Q. In 1930, when Mr. Gibbs came to see you, were you then familiar with Bingo or Tango games as they were then played in concession places?

"A. Yes. Not electrical.

"Q. Can you tell us briefly how Bingo games were played, those with which you were familiar?

"A. It was a board with a circuit which has a basket, with a number of squares. You threw a ball into the board, and if it landed in a certain position, it formed a line in one section or another.

"Q.—Were there separate pockets in the container in which you threw the ball?

"A. Yes.

"Q.—Each player got his turn to throw the ball?

"A. As I remember, yes.

"Q. Each player had a card on which he put beans?

"A. Yes, as I recall.

"Mr. Fulwider: That is all."

Then you recalled Mr. Mattingly. So the witness Porter repeatedly answered the direct question, both by Mr. Fulwider and myself, and said not only he did not claim any right to the idea, but he did not have any. He merely used his skill as an electrical man to put into practice the idea which [27] another man had. That is what happens, of course, many times, in patents where a person has an idea, and employs somebody skilled in the particular art to put it in the form of a workable apparatus.

Mr. Huebner: May I add a word before we adjourn? I would like to reemphasize the thing I have been talking about with regard to claim 6, which is typical of the game. There is no other game on the Pike, or anywhere else, like the Gibbs game. And to merely put a timeclock on a game, and be outside of the patent, would be manifestly unfair. Patrons come in who like to play the Gibbs game. There isn't any timeclock there. They are not playing against a timeclock. They are playing against each other.

The Court: I think in one of my opinions I said that the results are not a very safe guide, either in determining the existence or non-existence of variation. I don't have to determine what others might do if a narrow interpretation is given. I made these observations in regard to the nature of the game, because I feel these are gambling devices, and, as a judge, I am called to rule upon them. There is nothing in the law which prevents a person from inventing a game. In the Mantz case (*Mantz v. Kirsting*) (29 Fed. Sup. 406), which involved two devices for a spring sash balance, one of the lawyers, Mr. Westall, used the phrase that it was "a humble invention." I picked it up, because I liked it. I think [28] all the decisions of the Supreme Court should be read in that light, despite Mr. Justice Douglas' statement about a spark of genius. A thing may be very simple, and yet no one may have thought of it before.

The best illustration is the hookless fastener case, which made the zipper. In that case a man discovered, by doing sloppy work, by having those elements loose instead of tight, he achieved a flexible line instead of a rigid line, so, whereas you could employ the invention before only on a flat surface, such as a tobacco pouch,

you can now use it on men's clothing, women's clothing, in fact there is not anything upon which you cannot use a zipper. The result was achieved by doing poor workmanship,—what would be called a sloppy job, and in the trial of the case they used that expression. By making it loose, instead of tight, it became one of the most profitable patents in the world. If there is invention, I don't care how important it is, if it shows the inventive spirit, and is something nobody has thought of before, it is still invention. In fact, I can make a pun and say, no matter how humble, it is still invention.

Mr. Huebner: May I add this in light of your Honor's comment? We are not depending only on the result. As you say, the spirit of claim 6 is there. The defendant in his altered game is using the same solenoid on the circuit to cut off the non-winners, as he did originally. All he has done [29] is to cause the time switch to change the circuit instead of causing the solenoid to change the circuit. The result is not only the same, but the means are identical. He obviously chose a minute and three-quarters in his timing, because it was the average time it took somebody to win the game. So it is purely a subterfuge. He still has this means, that operates substantially the same way to get that result.

Mr. Fulwider: I have very little to say in reply. I would like to point out again that Mr. Huebner has not yet, to my mind, applied claims 3 and 6 to the Fawn game. With respect to claim 3, he seems to be seriously urging that the click of the clock, and the flicker of the light, when the blade is thrown over, causes infringement. It seems to me he is rather hard pressed, because the claim calls specifically for separate supplementary means.

Mr. Huebner: It does not say "separate."

Mr. Fulwider: I was using "supplementary" and "separate" synonymously. The claim says "supplementary means for indicating." That is the particular element put in this claim by Gibbs' own attorney.

I don't think, to say because a relay is a little bit noisy, and the lights happen to flicker as the switch goes on, that that means the terms of those specific elements.

One other thing with respect to the file wrapper. I want to call your Honor's attention to the fact that in that [30] file wrapper it shows the Examiner did not cite any competitive games at all, like Chester, Wallace and Higuchi, and the like. From that standpoint the Examiner did do, I believe, a very bad job, because in the normal course of searching in the Patent Office he should have produced such competitive games. If he had he would have combined them with Nakashima, and I am not saying there would not have been any claims allowed, but I am saying if the Examiner had produced those patents he probably would have forced the attorneys for Mr. Gibbs to make his language more definite.

As I mentioned, claim 3 had gone through unscathed. That is why I bring in the fact that the Examiner did not do an adequate job of searching, so far as claim 6 went. So far as claim 3 went, being so narrowly interpreted by the Examiner, it was allowed.

I believe Mr. Huebner—I don't know whether he meant it or not—stated that Mr. Mattingly had not said Nakashima anticipated. What Mr. Mattingly said was, if broadly construed claim 3 was anticipated; if narrowly construed, claim 3 was not.

I believe that is all.

The Court: Let me check again for a minute to make sure I have that right. You have eliminated 1 and 2?

Mr. Huebner: We eliminate 1, 2, 4, and 5. 1, 2, 4 and 5 are not in the case. [31]

The Court: You are claiming—

Mr. Huebner: 3, and 6 to 10.

The Court: Gentlemen, this matter has been pending for a long time, as matters go in this court, and I have had ample opportunity over the week end, in fact, since Thursday, because I did not have a case Friday, to study the problem and familiarize myself more closely with the issues involved, and the discussion we have had for two and a half hours has helped clarify my thoughts, and has given expression to some other things that are determinative in this case.

One of the things to bear in mind in this particular case is the fact that we are not dealing with contemporaneously claimed inventions in a certain field. It is quite evident from the evidence, as appears from the record, that the source of the defendants' apparatus is traceable directly to the Gibbs game. That Mr. Faulkner, prior to the time of copying or reproducing the Looff game had not tried to develop, either by himself or in conjunction with Mr. Hatherell, any games of this character. That is borne out by the fact that in the early stages of this case, before Mr. Fulwider got into the case, there was filed an affidavit upon the part of Mr. Faulkner in which he claimed a license under Looff, and I think I continued the matter, when it first came before me, because there was no affidavit by Mr. Looff, and Mr. Desmond at that time was the only attorney appearing for Mr. Faulkner, [32] and claimed that he had a paper somewhere which showed the license. Looff himself had filed an affidavit in court, in which he denied that he gave a license. The affidavit is dated October 26, 1946, and is executed before



Mr. Gerald Desmond, a very distinguished young attorney. With his father I had the distinction of serving on the Superior Court bench. In fact, we were appointed by the Governor at the same time, on the same day, way back in 1927. In this affidavit he alleges:

"That on or about February 15, 1946, deponent was given a license in writing by the said Arthur Loeff to operate a game known as Fawn and installed at 101 West Pike, Long Beach, California; that deponent is of the understanding and belief that the said Arthur Loeff has been given a license by the plaintiff, permitting sub-licensing for the use and operation of plaintiff's patented game under the said United States patent.

"That deponent is unable to locate at the present moment the written agreement hereinabove referred to but is making every effort to locate such an agreement and will furnish it to his attorney immediately upon discovering it."

He states that Loeff had admitted that he had a license, and asks that the temporary injunction be not granted. I continued the matter, I think, and finally received notice that [33] the document had not been located, and I had a prima facie showing made, and made findings as required by law, which were signed on November 12th.

That is very significant, because up to that time, while they did not concede any variation, there was no claim of any departure from the original game, sufficient to avoid infringement. I am stating that merely to illustrate the fact that the evidence before the court shows clearly that both games operated by the defendant are traceable not to his idea of developing a game of this character, but

merely to the direct use and appropriation of the invention of the plaintiff. That, of course, is not decisive, but it is a very important factor, and bears upon the ultimate facts in each case.

In *McCullough v. Kammarer* (39 Fed. Sup. 213) that is one of the very strongest elements which I emphasized in my opinion, and which was also emphasized by the Circuit Court, and under the facts in that case McCullough derived whatever knowledge he had from using Kammarer's machine. As a matter of fact, I think the record shows he was employed in the shop of one of the plaintiffs. Then he started out and all of a sudden developed oil tools. When this is the case, and the accused article is brought before the court, it becomes important how it originated.

In this case I am satisfied that the accused device is [34] directly traceable to Gibbs' invention. That does not necessarily settle the matter. It is a circumstance that may be considered. A man may succeed in making so many changes in what he appropriates from another, especially if the art is an old art, he actually defeats an alleged variation, even if the patent is sustained. And in the cases counsel mentioned, the *Mantz* case, and the two *Joyce* cases, because the art is crowded, the scope of the patent was narrow, as the history before the Patent Office showed. Some of the articles actually succeeded in avoiding infringement. As a matter of fact, I have always claimed I was responsible for *Joyce* imitations that flooded the market right after that decision.

In this case I am satisfied, from a study of the prior art, that there is no prior art which can be said to be anticipatory of this invention.

During the course of the argument I have indicated why the two best references cannot be read on any of the claims of the Gibbs patent, and why any of the Gibbs claims in suit cannot be read on Nakashima, Chester, or any of the other patents.

Ultimately, we are not discussing an electrical device. If we were discussing an electrical device then, as I have already pointed out, the function each element performs would become very important. If we were discussing a new griddle iron, or a new fireless cooker, we would be dealing with the [35] electrical construction as a primary consideration.

Here we have a game and therefore, in determining both validity and infringement, we have to bear that in mind. The very preamble of the specification says:

"This invention relates in general to a game, and more particularly to a form of game which embodies a plurality of electrically connected units arranged in such a manner that successive plays will be indicated visibly or audibly, and the winning play made by any one of the players on a particular unit will operate to give an additional signal of such winning play, and at the same time discontinue the signals of the successive plays made on the other units.

"It is a further object to provide a game embodying the elements and possessing the characteristics set forth in the following brief description."

Then they describe it. We have heard that the object is to produce a mechanical Bingo game, which, in itself, is traceable to the old European game of Lotto, where persons play in front of cards, with the aid of wooden coins, or beans as is done sometimes. The game would be played, and a person would draw a number out of a sack, and the player won if he had the number, in which event the players would cover it, and if he achieved five numbers in a row he called his game Bingo or Lotto. I probably played it 50 years ago, [36] back in Roumania, where I was born. It was a house game, and therefore did not involve any gambling, because children were allowed to play it. So that was the idea that was sought to be achieved.

I do not think that any of the prior art contains the nucleus of this game. It may be true that some element exists in one game, and other elements may exist in another, but it is a fundamental principle of patent law that the mere fact that each of the elements may have existed in the prior art prevents a person who combines them to achieve a different result from achieving invention over the prior art.

That general statement requires very little amplification, for I conclude that both the original Fawn game and the new or altered game in fact are based upon the same principle; that is, to complete filling five holes in a line. Both involve the participation of the player by rolling through various devices a ball in the holes arranged on a flat surface or table. Both have annunciator panels, in-

dicating the player, with the holes he has filled. The units are so arranged as to enable several persons to play at the same time.

So there is absolute identity of result, and substantial identity of the means of achieving it. And those which are introduced do not relate to the result of the game, except in the instance I have indicated, and that is, the Fawn game [37] is played for a definite time,—a minute and a half, making it possible for two persons to win during the course of the game, one after the other. The Gibbs game is played strictly on a competitive basis, and the moment one winner has won, the play of the other stops automatically, and this automatic stop is achieved by the electrical mechanism itself, and no time limit exists.

— The result is that under the Fawn game there can be any number of winners, and it is possible that no one should win, during that time, while under the Gibbs game only one player may win, and there is always a winner, because the game does not stop until one person has won. In the other game, as I have already stated, the time-clock automatically stops all games, and the clock is connected with the mechanism as an instrument complete in itself, which is outside of the construction itself.

Under the circumstances I feel that both games infringe claims 3, 7, 8, 9 and 10. I do not think that claim 6 is infringed, and I think if you read them the way counsel desires me to read them, they would fall under the interdict of the recent decision of the Supreme Court in *Halliburton v Walker*. That, and the observations I have

made during the course of the argument give you an idea of the decision, and the basis for it.

Under the circumstances judgment will be for the [38] plaintiff, that the patent covered by Letters Patent 1,906,260 is valid and is infringed by the defendants in claims 3, 7, 8, 9 and 10.

Counsel will prepare findings to include an injunction, and the matter will be referred to Commissioner David Head, as Special Master to take an accounting and to determine the damages and profits, if any, to be awarded to the plaintiff.

Gentlemen, I want to thank you for the thoroughness with which both sides have presented the case, and which has enabled me to dispose of it in a rather short period of time. I will put the original transcript in the file with the exhibits, as is my custom. If you have any reason for, them later on you may ask to withdraw them.

Mr. Fulwider: In view of the fact that claims 7 and 8 depend directly on 6, is it your Honor's intention to hold them infringed, whereas the broader claims would not infringe?

The Court: Only to that extent.

Mr. Fulwider: My thought was if claim 6, the broad claim, is not infringed, then claims 7 and 8, the narrow claims, could not be infringed. They only would be invalid. 9 and 10, while written separately, are really narrower versions of claim 6.

The Court: What is your view about that? I think they probably fell with it. I think Mr. Fulwider is right.



Mr. Huebner: I think the point he makes is correct, so [39] far as the application of the rules go.

The Court: I will eliminate 7 and 8, because they are dependent on 6.

Mr. Fulwider: May I ask a question of Mr. Huebner along that line: Isn't it true also, Mr. Huebner, that 9 and 10, although written independently are narrower than claim 6, and are directed to the same subject matter?

Mr. Huebner: I decline to answer that.

The Court: I think we will let them stand. The chief claim we are interested in is claim 3.

[Endorsed]: Filed Jan. 26, 1947. [40]

[Endorsed]: No. 11667. United States Circuit Court of Appeals for the Ninth Circuit. Todd C. Faulkner, Appellant, vs. John T. Gibbs, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed June 26, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11,667

TODD C. FAULKNER,

Defendant-Appellant,

vs.

JOHN T. GIBBS,

Plaintiff-Appellee.

STIPULATION RE ORIGINAL EXHIBITS AND  
PRINTED COPIES

It Is Hereby Stipulated by and between the above-entitled parties through their respective counsel, subject to the approval of the Court, that the following exhibits be considered as original exhibits before the Court and hence not printed in the Book of Exhibits:

Plaintiff's Exhibits: 6, 8.

Defendant's Exhibits: C, E.

It is further stipulated that soft, printed copies furnished by the Patent Office may be used in preparing the record in place of printed copies of Plaintiff's Exhibit 1 and Defendant's Exhibit D.

It is further stipulated that Plaintiff's Exhibit 7 may be reproduced in the Book of Exhibits in reduced size convenient for incorporation in such Book of Exhibits.

It is further stipulated that only fifteen (15) copies of the Book of Exhibits on appeal be printed and that four

copies of such Book of Exhibits shall be distributed to counsel for defendant-appellant, four copies to counsel for plaintiff-appellee and that the remainder be retained for use by the Court.

The purpose of this stipulation is to reduce the cost of preparing the record on appeal as far as possible commensurate with a proper presentation thereof to said Court for determination of the appeal.

Dated at Los Angeles, California, this 22 day of July, 1947.

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider

Counsel for Defendant-Appellant

HUEBNER, MALTBY & BEEHLER

By Herbert A. Huebner

Counsel for Plaintiff-Appellee

Approved and So Ordered this 24th day of July, 1947.

FRANCIS A. GARRECHT

Judge of the Ninth Circuit Court of Appeals

[Endorsed]: Filed Jul. 25, 1947. Paul P. O'Brien,  
Clerk.

# **RECORD**

**P. 292 - 313**

[Title of Circuit Court of Appeals and Cause]

ADOPTION OF STATEMENT OF POINTS  
ON APPEAL

Comes now Todd C. Faulkner, Defendant-Appellant herein, and formally adopts as his "Points on Appeal" herein, the Statement of Points to be relied on on appeal filed in the United States District Court and included in the transcript of record heretofore filed herein by the Clerk of said Court.

Dated at Los Angeles, California, this 22 day of July, 1947.

ROBERT W. FULWIDER and  
GERALD DESMOND

By Robert W. Fulwider  
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[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 25, 1947. Paul P. O'Brien,  
Clerk.



**Vol. II**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1949**

**No. 19**

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**TODD C. FAULKNER, PETITIONER,**

**vs.**

**JOHN T. GIBBS**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JANUARY 31, 1949.**

**CERTIORARI GRANTED MARCH 23, 1949.**

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**No. 11667**  
**IN THE**  
**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

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**TODD C. FAULKNER,**

**Appellant,**

**vs.**

**JOHN T. GIBBS,**

**Appellee.**

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**TRANSCRIPT OF RECORD**

**(In Two Volumes)**

**VOLUME II**

**BOOK OF EXHIBITS**

**(Pages 293 to 535, Inclusive)**

**Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division**

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Case No. 5566-Y Civ. John T. Gibbs vs. Todd C. Faulkner et al. Plf. Exhibit 1. Date 2-19-47. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.



May 2, 1933.

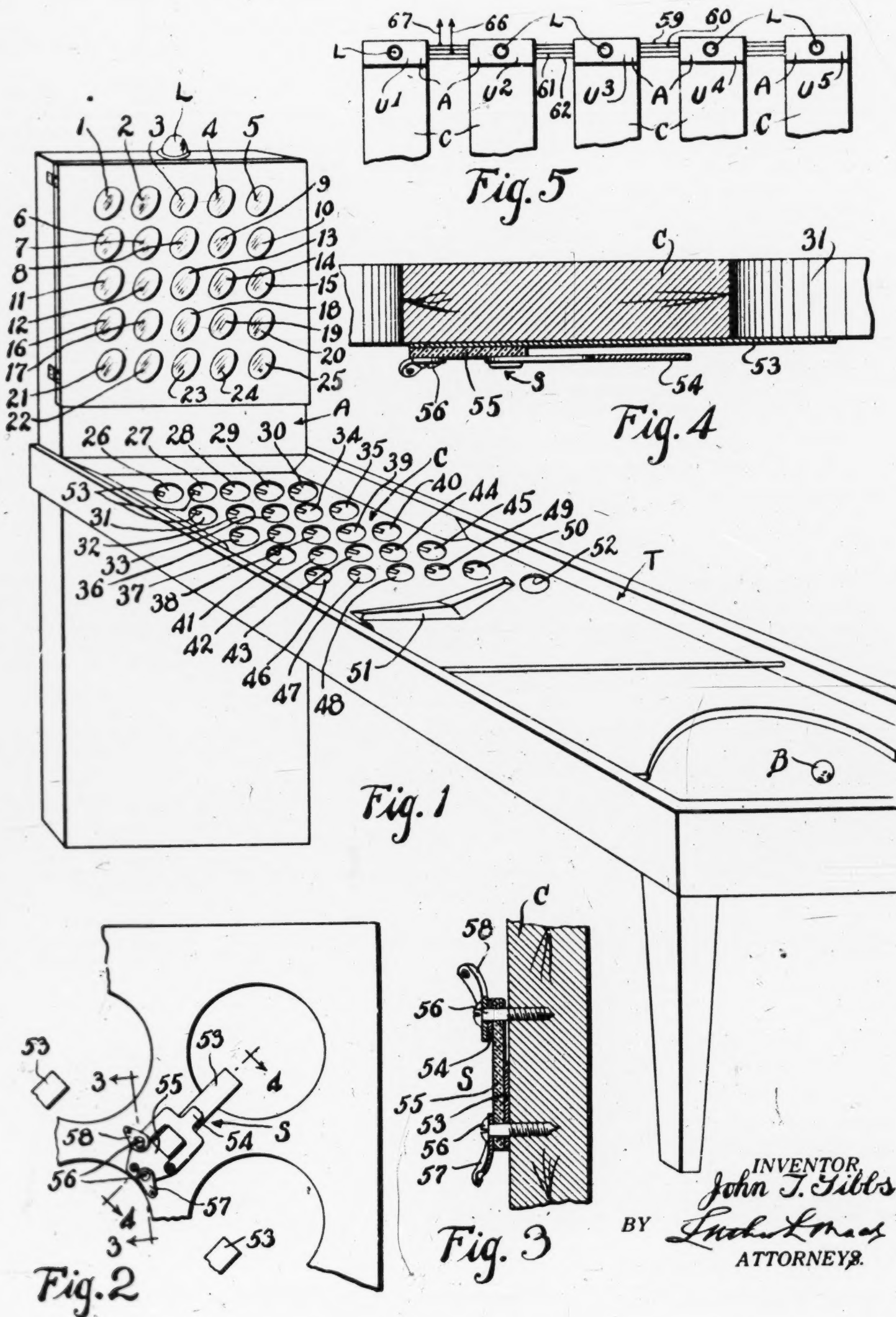
J. T. GIBBS

1,906,260

GAME

Filed Feb. 16, 1931

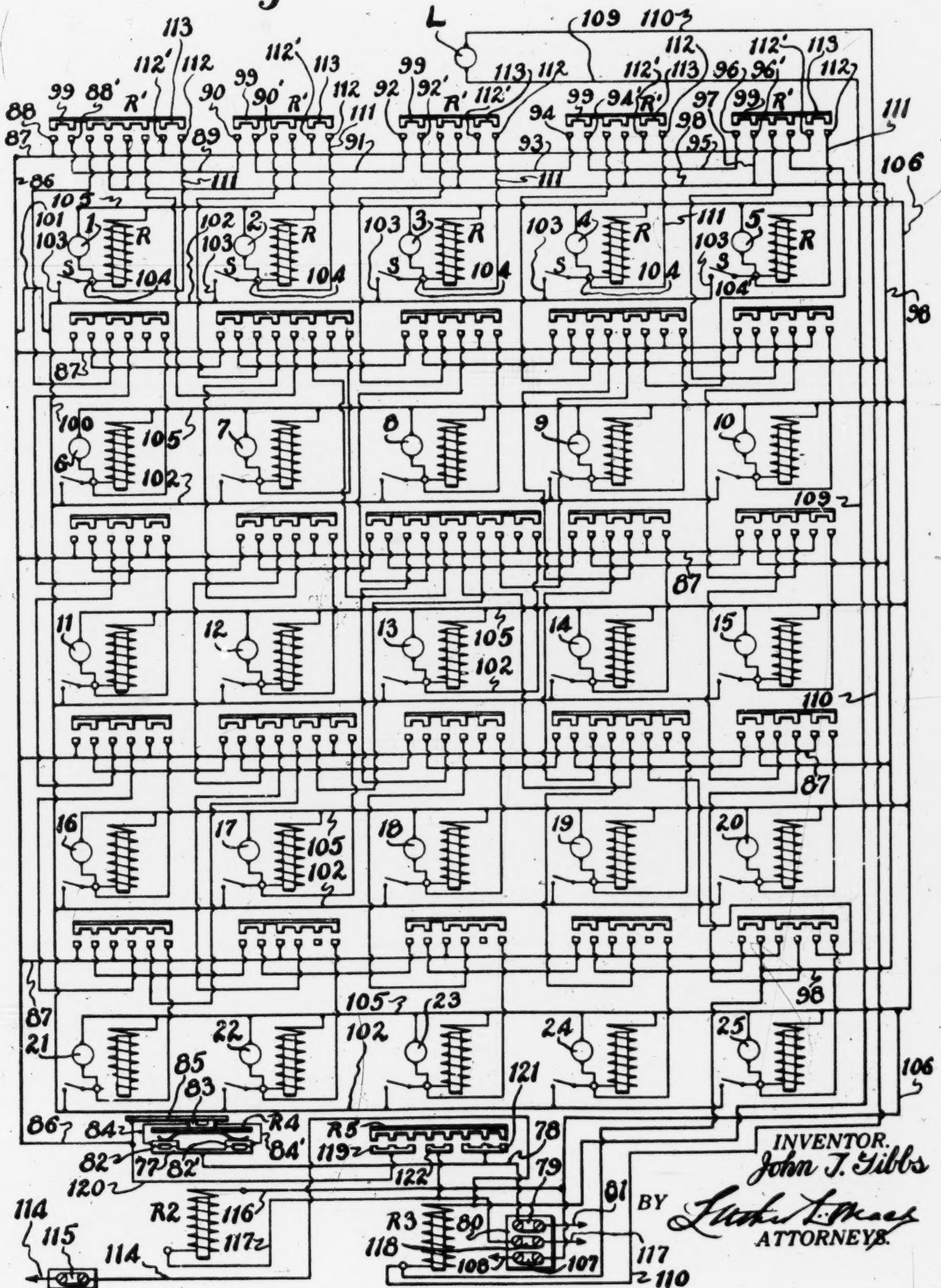
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Fig. 6



INVENTOR.

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May 2, 1933.

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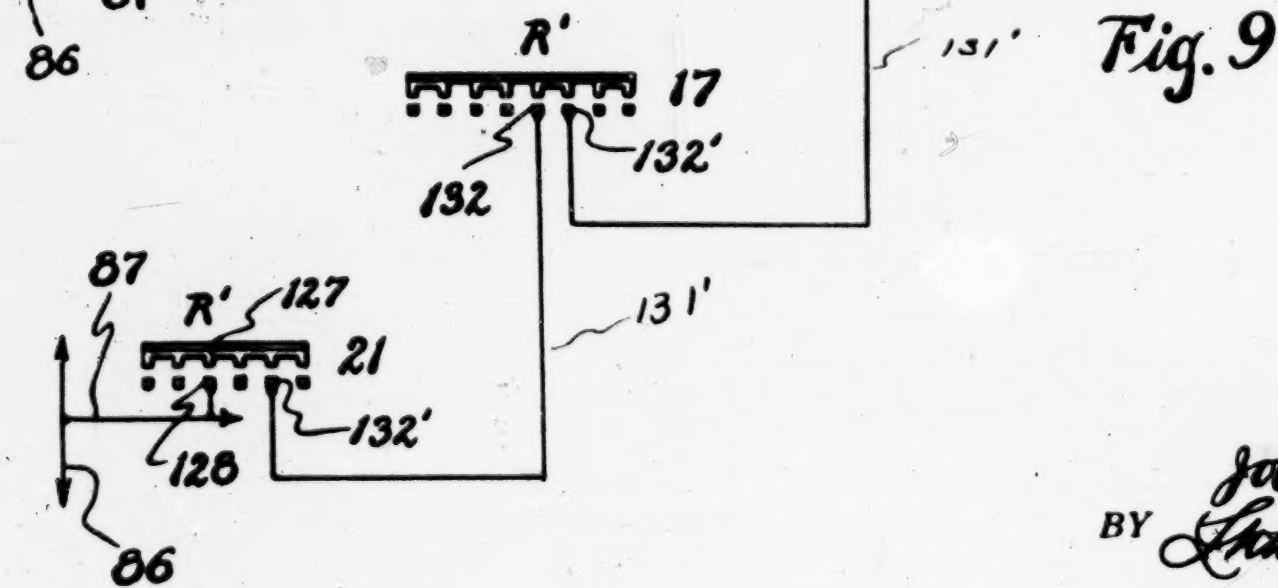
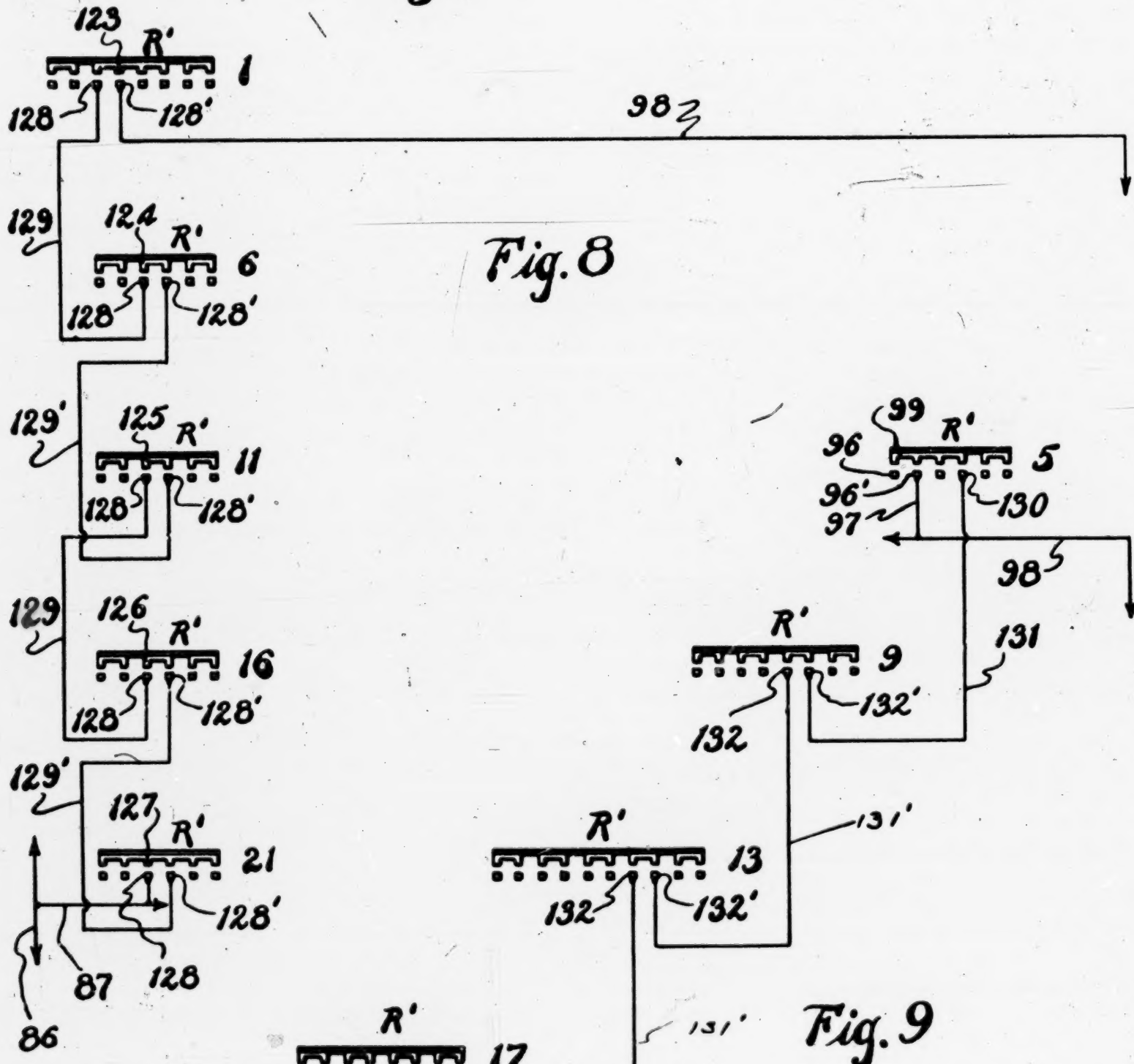
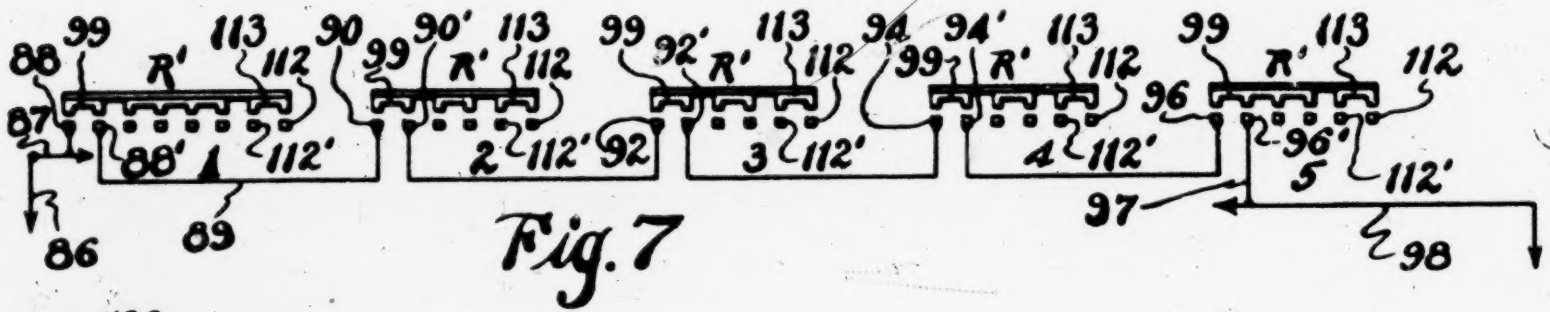
1,906,260

GAME

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(P. 290)



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May 2, 1933.

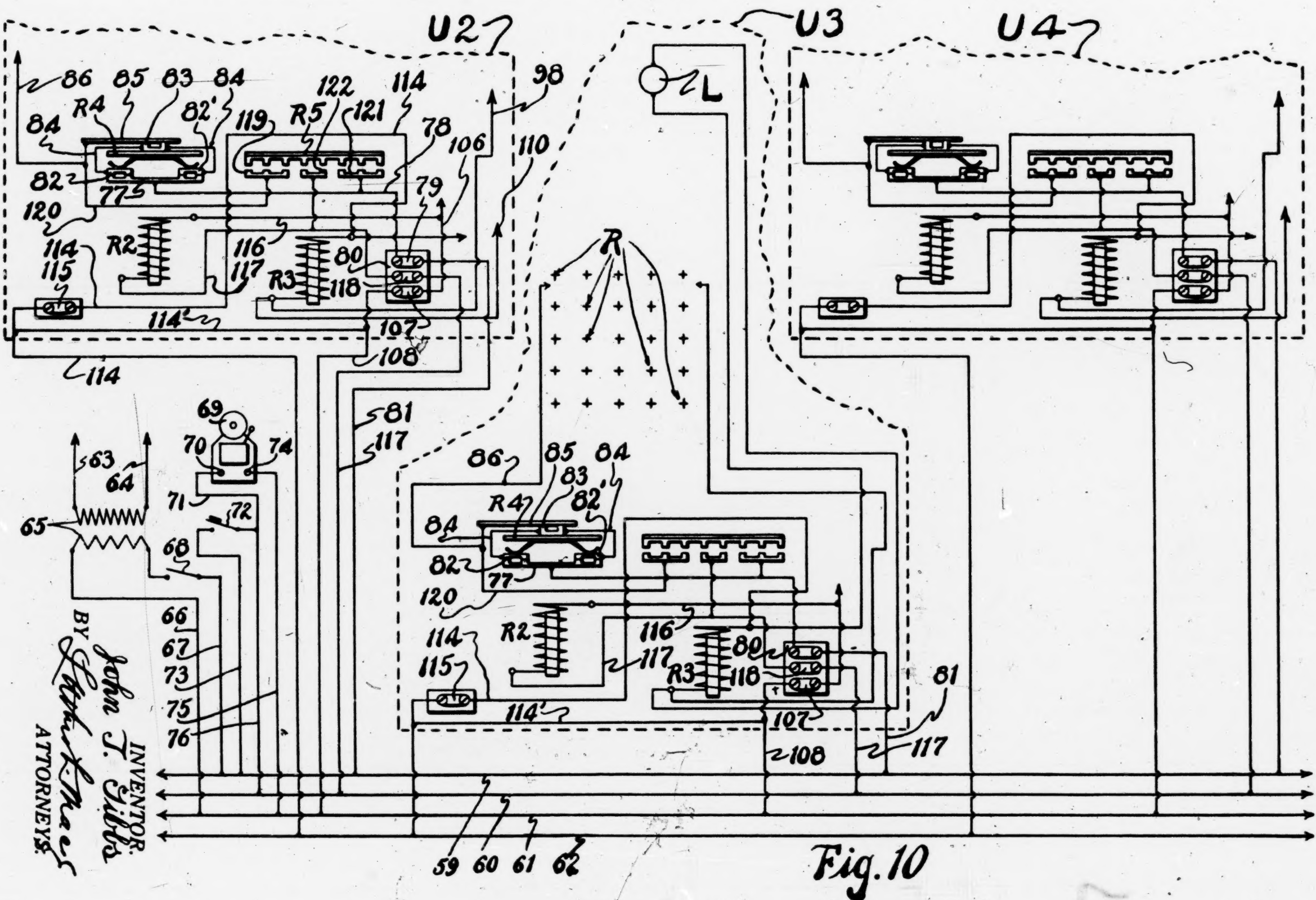
J. T. GIBBS

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GAME

Filed Feb. 16, 1931

4 Sheets-Sheet 4



## UNITED STATES PATENT OFFICE

JOHN T. GIBBS, OF LONG BEACH, CALIFORNIA

## GAME

Application filed February 16, 1931. Serial No. 515,951.

This invention relates in general to games, and more particularly to a form of game which embodies a plurality of electrically connected units arranged in such a manner that successive plays made by the players on their respective units will be indicated visibly or audibly, and the winning play made by any one of the players on a particular unit will operate to give an additional signal of such winning play, and at the same time discontinue the signals of the successive plays made on the other units.

It is a further object to provide a game embodying the elements and possessing the characteristics set forth in the following brief description.

Each of the units, of which there may be any number, includes a game board preferably disposed horizontally on the top of or forming the top of a table, and an annunciator. The game board of each unit is provided with a plurality of pockets or orifices into or thru which a ball or missile, when tossed or rolled over the board by a player, may drop or fall.

Each of the pockets or orifices has disposed in or at the bottom thereof a set of contacts which are capable of being operated by and when the ball is dropped into the pockets or thru the orifices.

The annunciator includes a plurality of indicators on the face thereof which may be of visible or audible character, and which correspond in number and arrangement with pockets or orifices on the board and are electrically connected with the contacts at such pockets or orifices. Thus the closing of the contacts in any of the pockets or orifices is designed to energize or actuate the corresponding signal on the annunciator.

Each of the tables is provided with an inclined bottom spaced from the game board so that when the ball drops thru any of the pockets or orifices it will roll by gravity downwardly to the front end of the table where it is accessible for another play.

In order to make the game more interesting and difficult, suitable obstacles or hazards may be provided on the boards so as to deflect the ball when it is rolled thereover, and

sometimes prevent the dropping of the ball into a pocket. The game board is also slightly inclined, however, and the obstacles are so arranged that under all conditions the ball will be returned to starting position after each play is made.

The pockets on the board and the indicators on the annunciator are correspondingly arranged in groups or sets, and a winning play is made when a player has dropped the ball into all of the pockets of any one of the group or sets, regardless of the number of plays which may have been necessary to accomplish this result. A substantial number of units are electrically connected, and when the first player has dropped a ball into all of the pockets of any one of the several groups or sets on his particular unit, supplementary audible and visible signals will indicate the winning play, and simultaneous therewith all of the indicators on the other units will be de-energized and only the indicators on the winning unit will remain energized.

At the beginning of the game the number of points to be awarded to the winner in each round or play is determined, and each time a player makes a winning play he is awarded the predetermined number of points. A game may consist of a predetermined number of points and the first player to win such number of points will win the game, or, prizes may be offered with values for certain and different numbers of points, and the players winning the required number of points will be awarded the prize or prizes corresponding to such numbers.

It is an object of this invention, therefore, to provide a comprehensive game of the character described, together with means for electrically connecting the several units in a compact and convenient arrangement of said units and the several elements of each of the units for facilitating the plays and for accommodating a maximum number of units in a limited amount of space.

Still other objects may appear as the description progresses.

In the accompanying drawings I have shown a preferred form of invention, subject to modification within the scope of the



appended claims without departing from the spirit thereof. In said drawings,

Fig. 1 is a perspective view of one of the units hereinabove described.

Fig. 2 is a fragmentary enlarged bottom plan view of the game board showing the arrangement and disposition of the electrical contacts associated with the pockets in the board.

Fig. 3 is a section of the same on line 3—3 of Fig. 2.

Fig. 4 is a section of the same on line 4—4 of Fig. 2.

Fig. 5 is a diagram showing a battery of units electrically connected together.

Fig. 6 is a circuit diagram of one of the units.

Figs. 7, 8 and 9 are typical circuit diagrams of one of the units showing the arrangement of the indicators in groups or sets.

Fig. 10 is a circuit diagram of corresponding portions of three of the units electrically connected together.

Referring particularly to Fig. 1, it will be observed that each of the units includes a vertically disposed annunciator A, a horizontally disposed table T and a game board C which may be attached to the annunciator A and disposed in a slightly inclined position over and forming the top of table T. The annunciator A is arranged with a plurality of indicators which are designated on the drawings by reference characters 1 to 25 inclusive. Each of said indicators preferably includes a lamp mounted in the annunciator housing behind a glass covered aperture. The board C includes a plurality of pockets or apertures designated by reference characters 26 to 50 inclusive, and corresponding in number and arrangement to the indicators 1 to 25 inclusive. The pockets or orifices are large enough to freely receive a ball B which is adapted to be rolled rearwardly over the board C so that it will fall thru any one of the pockets and will be returned to the front end of the table after each play by gravity.

Board C may be provided with hazards such as a raised rib or obstacle 51, or one or more apertures 52, thru which the ball may fall before or after traversing the rear end of the board containing the pockets 26 to 50 inclusive.

Beneath each of the pockets I provide a switch S which includes a pair of spring contacts 53 and 54 mounted on opposite sides of an insulating block 55 and secured to the bottom of the board C by means of screws as at 56. As shown in Fig. 4, the contacts are normally spaced apart and are flexible so that when the ball B is dropped thru the orifice, as at 31, the weight of the ball will be sufficient to flex the upper contact 53 downwardly into engagement with the lower contact 54, and if necessary thereafter flex both of said contacts together until the ball has

cleared the pocket and the contact 53 and drops onto the bottom of table T. It will be noted that the upper contact 53 is substantially longer than the lower contact 54, and said upper contact projects substantially over the bottom of the pocket 31. This structure is typical of each of the pockets 26 to 50 inclusive.

Terminal clips 57 and 58 are provided on the block 55 by means of which electrical conductors may be connected with the contacts 53 and 54, as hereinafter explained.

Each of the units is also provided with a supplementary indicator lamp L, which is adapted to be energized only when the circuit of any one of the groups of contacts S has been closed by dropping the ball B thru the several pockets of such groups. By means hereinafter described, the switches S associated with the pockets 26 to 50 inclusive are electrically connected with the indicators 1 to 25 inclusive of the annunciator, respectively.

By reference to Fig. 6, it will be observed that each of the indicators 1 to 25 inclusive is associated with a relay R having an armature R', and the switches S of the pockets 26 to 50 inclusive are likewise connected in the circuits of said relays and said indicators in such a manner that the closing of contacts 53 and 54 of the pockets 26 to 50 inclusive will close the circuit energizing the corresponding relay and its associated indicator. Each of the units is provided with a feeder relay R2 and a holding relay R3 having armatures R4 and R5 respectively, for purposes hereinafter described.

The indicators and pockets may be of any suitable number and arranged in any suitable form, but in the drawings I have shown the indicators and pockets arranged in right angularly and diagonally disposed rows or groups. For instance, the indicators 1 to 5 inclusive, 6 to 10 inclusive, 11 to 15 inclusive, 16 to 20 inclusive and 21 to 25 inclusive, constitute separate inter-connected groups or sets disposed horizontally of the annunciator. The indicators 1, 6, 11, 16 and 21; 2, 7, 12, 17 and 22; 3, 8, 13, 18 and 23; 4, 9, 14, 19 and 24; and 5, 10, 15, 20 and 25, form separate inter-connected groups which are disposed vertically of the annunciator. Likewise there are two diagonal groups composed of the indicators 1, 7, 13, 19 and 25, and the indicators 5, 9, 13, 17 and 21. All of said groups of indicators are commonly connected with a source of electric current thru the feeder relay R2 as hereinafter described.

In the consideration of this invention it is deemed unnecessary to describe all of the group circuits shown in Fig. 6, of which there are twelve, but three typical circuits are illustrated in Figs. 7, 8 and 9. The circuit of Fig. 7 includes the armatures of the upper horizontal group of indicators 1 to 5

inclusive, the circuit of Fig. 8 includes the armatures of the left hand vertical group of indicators 1, 6, 11, 16 and 21, and Fig. 9 includes the diagonal group of armatures of indicators 5, 9, 13, 17 and 21. As shown in Fig. 6, the armatures R' of the relays R are provided with a plurality of contacts arranged in pairs or multiples of pairs, depending upon the number and arrangement of contacts necessary to properly connect any one of the indicators with the indicators of another and other groups. The armature R' of indicator 1, for instance, has three sets of contacts, the central contact having four points and the outer contacts each having two points, while the armatures of indicators 2, 3 and 4 each have three sets of double contacts and the armature of indicator 5 has one four point contact and one two point contact.

Referring to Fig. 10, it will be observed that the several units shown in Fig. 5 and indicated by the characters U1, U2, U3, U4 and U5 are connected in multiple with a quadruple line consisting of conductors 59, 60, 61 and 62. Current from a source of supply is directed thru leads 63 and 64 to a transformer 65, and conductors 66 and 67 lead from the transformer to the feed wires 59 and 61, and a main switch 68 is interposed in one of the leads from the transformer, as for instance the conductor 67.

A signal bell 69 has one of its terminals 70 connected by means of a wire 71 with a switch 72 which is interposed in a conductor 73 leading to feed wire 59. The other terminal 74 of said bell is connected by means of a wire 75 with feed wire 61. The wire 71 from the bell also connects with the conductor 60 by means of a wire 76 for purposes hereinafter explained.

It will be understood at this point that the feed wires 59 and 61 are commonly connected with the circuits of the several units for feeding current to the relays and indicators of such units, while the wires 60 and 62, parallel with the wires 59 and 61, are employed as a means of interconnection between the several units, for purposes hereinafter explained.

The current in each of the indicators 1 to 25 inclusive and the relays R of the indicators is supplied thru the armature R4 of the feed relay R2. It will be noted that said armature is associated with a contact bar 77 which is connected by means of a wire 78 with a terminal 79 on a block 80, and that said terminal is connected by means of a wire 81 with the feed wire 59. The bar 77 always engages a pair of double pointed contacts 82 and 82' which are connected, respectively, with a double-pointed contact 83 fixed to the armature R4, by means of conductors 84 and 84'. The contact 83 normally engages a bar 85 which is electrically connected with a

conductor 86 which is common to all of the indicators and relays of each of the units, as shown in Fig. 6, and to that end has parallel branch leads 87, 87 etc., which are connected in multiple with corresponding fixed contacts of the several groups or rows of indicators. For instance, as indicated in Fig. 7, the branch 87 connects with the fixed contact 88 of armature R' of indicator 1.

A companion contact 88' connects by means of a wire 89 with the fixed contact 90 of indicator 2. A fixed contact 90' of indicator 2 connects by means of a wire 91 with a fixed contact 92 of indicator 3. The fixed contact 92' connects by means of a wire 93 with the fixed contact 94 of indicator 4. Similarly the fixed contact 94' of indicator 4 connects by means of a wire 95 with the fixed contact 96 of indicator 5; the fixed contact 96' connects by means of a wire 97 with a conductor 98, which is common to all of the indicators 1 to 5 inclusive. Conductor 98 is likewise common to the other groups of indicators, as shown in Fig. 6.

It will be observed that the armatures R' of the units 1 to 5 inclusive normally hold the circuit open, there being five gaps in the line which must be closed before the current can flow from wire 86 to wire 98. These gaps are between contacts 88 and 88', 90 and 90', 92 and 92', 94 and 94', and 96 and 96', referring particularly to the horizontal group of indicators 1 to 5 inclusive, as shown in Fig. 7. Said gaps are adapted to be closed by double-pointed contacts 99 mounted on the armatures R' and adapted to bridge the paired contacts.

Other similar fixed contacts, also arranged in pairs, and multiple pointed contacts for bridging the pairs of fixed contacts are provided on the armatures R' of the several indicators for closing the gaps in the circuits of the different groups or sets of indicators.

The description of the circuit shown in Fig. 7 is typical of all of the horizontal groups of indicators shown in Fig. 6. By reference to Fig. 6 it will be noted that the current from the wire 86 is divided so as to provide a duplex circuit, one portion of which is thru the switches S, and the other portion of which is thru the armatures R' and their associated groups of contact.

It will be noted that current is supplied from the feed wire 86 to a conductor 100 by means of a connection 101, and branches 102, 102 etc., lead from the conductor 100 horizontally across the annunciator for connection with the several groups of relays R, R etc., and indicator associated therewith. The indicators 1 to 5 inclusive are thus supplied with power from the branch 102 as follows: The switches S, S etc., each of which includes the pair of contacts 53 and 54 disposed below the pockets in the table, are connected by means of wires 103 with the branches 102, and also with terminals 104 as shown. The



relays R, R etc., and the indicators 1 to 5 inclusive are connected in multiple with the wire 102 at the terminal 104 and with the parallel line 105 in the same manner in each case.

The conductors 105 are commonly connected with a wire 106 which leads to terminal 107 of the terminal block 80 and connects with the main feed wire 61 by means of a wire 108. Thus, for instance, as the circuit of any of the relays R is closed by the engagement of the ball B with the switch S, said switch will be operated and the circuit of the corresponding relay and indicator, as at 1 for instance, will be closed, current flowing from the feed relay thru the wires 86, 101, 102 and 103 to the relay and indicator, and from such elements thru the wires 105, 106 and 108. Thus current is delivered to the relay and indicator from the feed wires 59 and 61. The energization of the relay R of indicator 1, for instance, will attract the armature R' and close the first gap in the circuit of the group of indicators 1 to 5 inclusive. The other indicators of this set or group are similarly operated either in succession or otherwise, but a winning play cannot be indicated until the circuit thru the armatures is completed by the closing of all of the gaps thru the contacts 99 on the armatures R'.

The dropping of a ball thru a pocket only momentarily closes the switch S, thus energizing the associated relay R, thereby attracting the corresponding armature R' to the fixed contact. The armature, however, will remain closed and bridges the several sets of contacts associated therewith, altho the switch S has again been opened, for the following reason:

The terminals 104 of the several relays are connected by means of wires 111 with fixed contacts 112, and paired contacts 112' are connected with the horizontal conductors 87 so that when the armatures R' are closed the contacts 112 and 112' in each case will be bridged by double-pointed contacts 113 on the armatures. Thus once a relay R is energized by the closing of a switch S the armature R' will hold the circuit of that particular relay closed until and while the other relays of that particular group or other groups have been or are being energized or a winning play has been made in some other unit. The master indicator L on each unit is connected in multiple with the holding relay in such a manner that when all of the gaps in the circuit of any one of the groups have been closed the lamp will glow to indicate a winning play. Said lamp has wires 109 and 110 leading therefrom and connected with opposite terminals of the holding relay R3. The holding relay R3 becomes operative (on the closing of the circuit of any one of the groups of armatures) for holding the circuits of such group of relays and armatures closed

while the circuits of relays in other units are thereby automatically opened.

To this end the connections consisting of the wires 60 and 62 are provided for inter-connecting all of the units so that a winning play on any one unit will discontinue the signals on all units except that on which the winning play is made. For this purpose the holding relay R3 includes a conductor 114 which leads thru a terminal block 115 on each of the units to the inter-connecting conductor 62. Conductor 114 also connects thru wires 114' and 108 to line 61 for completing the circuit from the holding relay. Also the feed relay R2 has one side 116 connected with the wire 106 which, with the block 107 and wire 108, completes the circuit to line 61, while the other side 117 of said relay is connected with a terminal 118 on block 80 and leads therethru to the wire 60. Thus, thru the energization of a holding relay, current will flow from line 60 back thru line 117 of the other units, energizing their feed relays, discontinuing the signals thereof.

The armature R5 of the holding relay of each unit has three sets of fixed contacts adapted to be bridged by the armature when the holding relay R3 is closed. Said contacts include a three-pointed contact 119 connected by means of a conductor 120 with the main feed line 86 of each unit, and also a three-pointed contact 121 connected with the wire 78 leading to the contact bar 77 of the feed relay. A double-pointed contact 122 is also provided for the armature R5 which connects with the feed relay line 117.

Thus the energization of the holding relay will energize the feed relay by means of current supplied from line 59 thru wire 81, terminal 79, wire 78, contacts 121, 122, and wire 117 to the feed relay, from which the circuit to line 61 is completed by means of wires 116, 106, terminal 107 and wire 108. Also, the wire 120 permits the current to continuously flow into wire 86 even tho the circuit has been broken between contact 83 and bar 85 by the energization of the feed relay.

Altho it is not necessary for the feed relay of the winning player's unit to be energized for any purpose of such unit, it is necessary that the current pass thru the coil of said relay ultimately to the line 61 and thence thru the wire 75 to the bell 69, the circuit being completed from the bell to line 60 by wires 71 and 76. From line 60 the current returns to line 61 via the holding relays of the other units. Thus the bell will ring, signaling the house operator who will locate the winning unit by its glowing lamp L.

After the winning unit is properly recognized, momentary opening of the switch 68 will break all the circuits, restoring all relays to open position. Switch 68 can be left open if it is desired, to prevent unauthorized persons from playing during the absence of the

house operator. After the switch 68 is closed it is desirable to signal all the players to start at one given moment.

A means is provided for this purpose in the switch button 72. Players are informed that the play starts when the bell is silenced, because no electrical contact can be made until the bell has ceased ringing, due to the current flowing thru line 60, which energizes the feed relays of all units.

It will be observed that the connections between the feed relay and the holding relay and the individual relays of each of the indicators of all of the units are substantially the same, and it is believed unnecessary to describe in detail all of the connections for the several groups of units. Three typical groups are shown, however, in Figs. 7, 8 and 9, the first of which has been hereinbefore described.

The vertical group of indicators, shown in Fig. 8, is similar to the horizontal group shown in Fig. 7, except as to the position of the contacts on the armatures, and the same is true of the diagonal group shown in Fig. 9.

The number and arrangement of the contacts on the several armatures R' are necessarily different, depending upon the number of indicators in a group, the particular arrangement of the indicators of each group, and the number of groups of indicators. Some of the armatures for the indicators are included in but two groups, while others are included in three or four groups, thus necessitating provision for a suitable number of contacts on the armatures to accommodate the multiplicity of connections.

Referring now to Fig. 8, I will describe the connections of the group of indicators 1, 6, 11, 16 and 21. The armatures R' of said left hand vertical group of indicators have, respectively, movable contacts 123, 124, 125, 126 and 127 thereon, together with sets of fixed contacts which are bridged by the movable contacts as the relays of said indicators are energized for completing the circuit of such group of indicators. The third and fourth contacts from the left on the indicators 1, 6, 11, 16 and 21 are paired for the purpose of connecting said indicators together. Each of said indicators has a pair of fixed contacts 128 and 128'. Contacts 128 of indicators 1 and 6 and the corresponding contacts of indicators 11 and 16 are connected by wires 129, while contacts 128' of indicators 6 and 11 and the corresponding contacts of indicators 16 and 21 are connected by similar wires 129'. The contact 128' of indicator 1 is connected with wire 98 while the contact 128 of indicator 21 is connected with wire 87, thus completing the electrical connections of this particular group of indicators in substantially the same manner as that described in connection with the group of indicators 1 to 5 inclusive.

Now referring to Fig. 9, I will describe the connections of one of the diagonal groups of indicators including indicators 5, 9, 13, 17 and 21. The fixed contact 96' of indicator 5 is connected as hereinbefore described by means of wire 97 with the lead wire 98. The fourth contact 130 of said indicator is connected by means of a wire 131 with the contact 132' of indicator 9, which has a companion fixed contact 132. Similar contacts 132 and 132' are provided on the indicators 13 and 17, while the indicator 21 has only the contact 132'. The contacts 132 of indicators 9, 13 and 17 are connected by wires 131' with the contact 132' of indicators 13, 17 and 21. The connections of this group of contacts with the lead wires are completed thru contact 128 of indicator 21 and wire 87 to the lead wire 86.

Having thus described the electrical connections of three groups of indicators as shown in Figs. 7, 8 and 9, it will be understood that other horizontal, vertical and diagonal groups are connected in a similar manner with the lead wires 86 and 98 to the feed relay R2 and the holding relay R3 and the main power wires 59 and 61.

What I claim is:

1. A game apparatus comprising a board having a plurality of apertures, electrical contacts adjacent each of said apertures, an annunciator having a plurality of electrical indicators thereon corresponding in number with said apertures, said indicators and said apertures being subdivided into corresponding groups, means for electrically connecting said contacts with the corresponding indicators, means for supplying electric current to said indicators, a plurality of relays in the circuit of said indicators adapted to be energized when a ball is dropped thru said apertures into engagement with said contacts, and armatures associated with said relays having contact devices thereon registering with fixed contacts on said annunciator, whereby when each of said contacts has been momentarily operated by said ball, said relays and said indicators will be energized and said armature contacts will be caused to engage said fixed contacts, and subsequent to the opening of said contacts the circuit of said relays and said indicators will remain closed.

2. A game apparatus as characterized in claim 1, including a master signal connected in the circuit of said indicators and adapted to be energized when all of the indicators in any of said groups have been energized.

3. A game apparatus comprising a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators, means for electrically connecting said indicators with a source of electric current and with said contact devices, said indi-



cators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups, means for energizing said indicators as the associated contact devices are operated, an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized, and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized.

4. A game apparatus comprising a board having a plurality of contact devices mounted thereon, a corresponding number of indicators also mounted thereon and electrically connected with the contact devices respectively, said indicators and said contact devices being of corresponding number and subdivided into corresponding groups, a relay and an armature therefor in the circuit of each of said indicators, movable contacts on said armatures, fixed contacts normally spaced from said armature contact, and connections whereby when an object is moved by a player into engagement with said contacts said contacts will be momentarily closed for initially closing the circuit of the corresponding indicators and relays, thereby engaging the corresponding armature contacts with the associated fixed contacts for closing the circuit of said indicators and relays when said first mentioned contacts are again opened, and means for connecting the several indicators of each group for maintaining an open circuit of all of the groups until all of the indicators of one group have been successively energized.

5. A game apparatus as characterized in claim 4, including a signal connected with said groups of indicators and adapted to be energized when all of the indicators of any group have been energized.

6. A game apparatus comprising a plurality of units electrically connected together, each of said units including a plurality of contact devices and a plurality of indicators corresponding in number and subdivided into corresponding groups, means for electrically connecting the contact devices with the corresponding indicators, means for electrically connecting said units together and with a source of electric current, said indicators adapted to be operated when and as objects are moved by the players into engagement with the contact devices, and means whereby when all of the indicators in any group of any one of said units have been operated to complete a winning play, the indicators on all of the units except the winning unit will be deenergized, while the indicators at the winning unit will remain energized, for the purpose described.

7. A game apparatus as characterized in claim 6, including an independent supplementary

signal at each of said units for signaling a winning play to the players.

8. A game apparatus as characterized in claim 6, including an independent supplementary signal at each of said units for signaling a winning play to the players, and means under the control of an operator for opening and closing the circuits of all of said units simultaneously at will.

9. A game apparatus comprising a plurality of electrically connected units, each including a game board with a plurality of apertures therein, and an annunciator with a plurality of indicators thereon, electrical contacts adjacent each of said apertures connected in the circuits of said indicators, said indicators and said apertures corresponding in number and subdivided into corresponding groups, whereby when objects are deposited in said apertures by the players at the several units corresponding indicators will be energized, a supplementary signal circuit on each of said units, and means for holding said signal circuit open until all of the indicators of any group on each of said units have been energized, and for closing said signal circuit when all of the indicators of any unit have been energized, and means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units.

10. A game apparatus as characterized in claim 9, including an audible signal commonly connected with all of said units and adapted to be operated upon the closing of the supplementary signal circuit of any of said units.

JOHN T. GIBBS.

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**49**

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[PLAINTIFF'S EXHIBIT NO. 2]

Huebner, Maltby & Beehler and  
Albert M. Herzig  
610 South Broadway  
Los Angeles 14, California  
Michigan 3821  
Attorneys for Plaintiff

In the United States District Court  
Southern District of California  
Central Division

No. 5566-Y Civil

John T. Gibbs, Plaintiff, vs. Todd C. Faulkner and  
Edna C. Faulkner, doing business under the fictitious firm  
name of Fawn, Defendants.

DESCRIPTION OF THE CHARGED FAWN  
STRUCTURES AND THE MODE OF  
THEIR OPERATION.

The following description taken in conjunction with the drawings and photographs annexed has been proposed by the attorneys for the plaintiff as the foundation for a Stipulation between the parties relative to the construction and mode of operation of the allegedly infringing apparatus. The photographs annexed and marked Figures 1-8 inclusive were taken by L. E. Riechner, a photographer of the Inman Company of Long Beach, California, on September 5, 1946 in the presence of the defendant Todd C. Faulkner, and in the presence, and with the cooperation of, counsel for the defendant and counsel for the plaintiff. The drawing, Figure 9, representing a schematic wiring diagram of the charged structures, has been compiled

(Plaintiff's Exhibit No. 2)

through the joint efforts of counsel for both parties from information furnished by counsel for the defendant in conformity with, and by the aid of, the photographs, Figures 1-8, including inspection of the charged structures at Long Beach by the parties aforesaid on September 5, 1946.

First describing the photographs:

Figure 1 is a perspective view of the right-hand side of the room at 101 West Pike showing one bank of 16 units comprising machines 20 and corresponding back-panels 21 arranged against one wall, as viewed from the entrance, and numbered consecutively from 1 through 16 by means of a superior numeral 22 above the back panels.

Figure 2 is a perspective view of a playing unit as seen, by a player seated in a chair 23. (A hinged glass cover 24 upon the playing board 20 is held open to facilitate clear photography.)

Figure 3 is an enlarged top perspective view of the machines similar to Figure 2.

Figure 4 is a bottom perspective view of the operating mechanism associated with the machine substantially as the mechanism would appear from a position below the same as at the upper right-hand corner of Figures 2 or 3.

Figure 5 is another view of the operative mechanism removed from its machine (positioned upon the top of a pair of adjacent machines merely for convenience in supporting the same) disposed substantially as it would appear within the machines from the view-angle shown.

Figure 6 is another view of the operative mechanism turned around with its far end to give a perspective as from the opposite end of Figure 5.



(Plaintiff's Exhibit No. 2)

Figure 7 is an end-on view of the operating mechanism taken upwardly at a slight angle, as from the lower left-hand corner of Figure 6.

Figure 8 is a perspective view of the central control mechanism at the back of the machines.

Figure 9 is an electrical diagram of a group of playing units.

### GENERAL CONSTRUCTION OF THE FAWN GAMES

Referring first to Figure 2 of the appended photographs showing the playing field on one of the Fawn machines, an inclined playing board, designated by the numeral 25, includes a conventional, manually operated, spring-urged plunger 26 at the lower right-hand corner of the board designed for actuation of a single metal ball 27 which then traverses a curved path 28 at the far end of the board after which it impinges against or passes between any of a number of bumpers 29, thence past or into any of a row 30 of twelve numbered, horizontally positioned holes 31 adjacent which is another row of twelve numbered holes 32 individually staggered relative to the first row 30 but collectively parallel thereto. After passing the second row of holes, the ball, unless it has dropped into one of the holes, traverses the inclined face 25 of the playing board until it strikes an elongated, slanted guide member 33 which then conducts the ball to an escape hole through which it is automatically returned to a position in front of the plunger for repetitive play.

The central position in line with the uppermost row of holes, corresponding to the central number "3" or light 34 (known as the "free" light) upon the back panel 21,

(Plaintiff's Exhibit No. 2)

is occupied by a rubber bumper 35 against which the playing ball 27 may impinge and be deflected. The bumper 35 corresponding to the central number 3 position is not numbered, but the numerical series in the center group (white) is continuous as if said bumper were numbered "3".

The two horizontal rows of holes on the Fawn board are numbered together and consecutively from "1" to "5" in colored groups of five holes each which, reading from left to right (Figures 2 or 3), are respectively colored and designated blue 36, yellow 37, white 38, red 39, and green 40. The numerals designating the numbers of the holes and which correspond to the panel lamp numbers appear in a line 41 and correspond to the holes which are spaced in a zigzag manner across the board from left to right. Thus a number "1" hole is at the extreme left-hand edge of the playing board in the farthest row 30 of holes, a number "2" hole being in the nearest row 32 of holes at the left-hand edge of the board, and so on.

Referring now to the backboard, as illustrated most clearly in Figure 2, each machine has, as stated, a corresponding panel or backboard 21 containing twenty-five colored lights arranged in vertical and horizontal rows of five lights each, each horizontal row, 36', 37', 38', 39' and 40' being numbered consecutively from 1 to 5. The lights upon the back panel 21 correspond in color, grouping, and numerology to the holes upon the playing board and, except for the central "3" or "free" light, are illuminated when the playing ball 27 falls through a corresponding hole upon the playing board. The center light is illuminated from the commencement of play without

(Plaintiff's Exhibit No. 2)

the necessity of a player's rolling the ball through the corresponding central hole on the playing board. Each machine and its corresponding panel is designated by a superior figure 22 which designates and distinguishes the playing units (machines and panels), respectively.

### DETAILED CONSTRUCTION OF FAWN MECHANISM

The general form of the playing board and its arrangement and the corresponding form and arrangement of the panels having been described, the operative mechanism of the Fawn machines will now be described:

The operative mechanism 50 is normally disposed beneath the inclined playing board 25. Its general form is illustrated most clearly in Figures 4, 5 and 6 and a view of the far end of the same is shown in Figure 7. In its normal position below the playing board, the frame 50 of the mechanism is supported in a position similar to that shown in Figure 5 wherein, as stated, the mechanism has been separated from the machine and is shown supported upon the tops of two machines merely for the convenience of the photographer. In such normal position relative to the machine twenty-four longitudinally placed levers 51 are arranged in parallel relationship to one another and have end portions 52 disposed just within and below the corresponding holes 31 of the playing board. The levers 51 are mounted so as to tilt upon a common transverse axis 53 when the playing ball 27 drops upon the ends 52 of the levers after falling through one of the holes 31. In Figure 5 all of the levers 51 are shown in an untilted position, with the exception of the first

(Plaintiff's Exhibit No. 2)

five levers designated by the numerals 53', 54, 55, 56 and 57, respectively. Spring fingers 58, secured to the general frame 59, frictionally bind the levers 51 in their normal undepressed positions but with insufficient force to overcome the weight of the playing ball, and also function as switches.

As may be seen most clearly from Figures 4 and 7, these being respectively a bottom perspective and end view of the operative mechanism, the frame 50 supports a transverse shaft 60 upon which a plurality of independently rotatable wheels 61 are mounted. The wheels 61 correspond in number and are individually associated with the levers 51 just below their forward ends 62. The wheels 61 are each fitted with springs 63, as may be best seen in Figure 7, by means of which they are urged in a given direction of rotation as hereafter explained.

Each of the wheels 61 is provided with a single holding spoke 64 extending radically therefrom and some also with an additional selecting spoke 65. The direction of rotation of the wheels by virtue of the individual springs 63 is in a direction normally to cause the holding spokes 64 to abutt against the forward ends 62 of the levers in their depressed position. This condition is best illustrated in Figure 7 where all holding spokes except said five at the right-hand end of the picture are being held against the depressed forward ends 62 of the levers thereby restraining rotation of the wheels beyond the position thus established. It may be understood that when the levers are depressed (i. e., at their rearward end) the holding spokes 64 are released from their engagement against the forward ends of the levers permitting the corresponding

(Plaintiff's Exhibit No. 2)

wheels 61 to rotate to a slight extent until they lie substantially under the forward end of the lever where they are again held by impingement against a transversely disposed holding bar 66.

Reference to the panel 21 (Figures 1 or 2) discloses five vertical rows of five lamps each and five horizontal rows of five lamps each, as well as two diagonal rows of five lamps each making a total of twelve possible combinations of five lamps-in-a-row upon this panel. The selection of any one of these rows of five lamps is controlled by one of twelve U-shaped selecting bars such as 67, 68 and 69 (Figure 7). Said selecting bars are disposed transversely across the frame and rotatably mounted upon the common transverse shaft 60 at their respective ends. Each of the selecting bars are spring-urged in the same direction as the individual wheels 61 by independent springs (not clear from the photographs) associated with each of them. The bars are restrained in said rotation by impingement against a selected group of selecting spokes 65 or holding spokes 64, but as may be seen most clearly from the selecting spoke 65 at the right-hand end of Figure 7, the elevation of the forward end of the lever 51 permits the rotation of the corresponding wheel 61, to a limited extent thereby spacing the selecting spoke 65 from its corresponding selecting bar 68. It may be seen, therefore, that when all of the selecting spokes have been similarly moved away from their engagement with the selecting bar by the elevation of the corresponding ends of the levers, the corresponding selecting bar is permitted to rotate to some extent under the influence of its associated spring. Thus, for example, in Figure 7,



(Plaintiff's Exhibit No. 2)

selecting bar 68 will be free to move slightly upwardly in a rotating direction when all of its selecting spokes 65 have been moved away by actuation of the corresponding levers; e. g., the selecting bar 67 is shown to be held against rotation by its five holding spokes 64', but the selecting bar 68' at the right-hand end of the mechanism shown in Figure 7 has been released for slight rotation to end a game, as later explained.

Thus rotation of any individual wheel 61 caused by depression of its corresponding lever closes an electrical circuit (58) connected to a panel lamp corresponding to the hole associated with the lever. Upon rotation of any five wheels corresponding with five lamps in a row, a suitable selecting bar (normally held by the spokes of said wheels) is free to rotate slightly to close an electrical circuit controlled by a mercury switch M, (Figs. 4 & 9) which serves to extinguish all of the lamps upon all of the panels except that of the winner while simultaneously closing a circuit which illuminates one of the superior numerals 22 designating the winning unit. This movement of the selecting bars and the de-energizing effect upon the remaining machines in the bank upon scoring a "win" can be cancelled out by the actuation of the control lever 41 by an Operator, thereby re-illuminating all central or "free" lamps 34 upon the panel and extinguishing all other lights, including the superior light 22 and others of the winning panel, so that the game may resume. For such purpose the control lever 41 (Figure 8) is keyed to the longitudinal shaft 42 which in turn is

(Plaintiff's Exhibit No. 2)

individually linked to the machines by tilting control arms 70. Said control arms are rigidly secured to a tilting pressure plate 71 pivoted on the frame to depress auxiliary fingers 72 (Figures 5 and 6) comprising forward extensions of the levers 51, to reset the levers in cooperation with a cam arm 73 extending through the control arm 70. The cam arm pulls a link 74 which returns the wheels 61 to their former positions thereby enabling the holding spokes to be reset against the forward ends of the levers as shown in Figure 4.

### THE ELECTRICAL SYSTEM OF THE FAWN GAMES

Referring to Figure 9, annexed hereto, illustrative of three (or more) machines 20 and annunciator panels 21, electrical energy from a source of supply, not shown, is carried to the system through a pair of power conductors 75 and 76. The voltage is then reduced by means of a condenser C carried by main supply lines 77 and 78. Auxiliary supply lines 77' and 78' connect into each machine 20 through respective multiple switches S which operate in a manner hereinafter to be described.

The lines 77 and 78 are inter-connected in each machine 20 and each back panel 21 associated therewith. For this purpose feed lines 83 from main line 78 connect with feed contacts 84 of the holding switches S in each unit, thence through an annunciator lead wire 85 to the annunciator panel 21 through a common line 87 and by

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(Plaintiff's Exhibit No. 2)

means of individual wires 86 to one terminal of each annunciator lamp, other than the central "3" or "free" lamp as will be explained. The other terminal of each annunciator lamp connects to lines 88 each of which connects with the switches or contact devices 58 respectively adjacent each hole 31 in the playing board (Figures 2-6 and 9) as heretofore described. These switches 58 normally break the circuit to each lamp as illustrated in Figure 9, but are closed by impingement of the playing ball 27, as when the ball has fallen through a hole 31 in the playing board and upon a lever 51 comprising a part of each switch 58 (Figures 5, 6 and 7). The closing of any switch 58 permits the current to flow there-through to the main feed wire 77 by way of a common wire 90 and a return wire 91, 92 leading to supply wire 77 and thereby illuminating the corresponding panel lamp.

Another wire 93 connects with a mercury switch M, provided in each playing unit and which at the commencement of play is normally open in all units, breaking the circuits in each of the lines 93. In sum, therefore, the circuits from the main line 77 through the individual lamps 89 by way of the contact devices 58 and through the lines 91, etc., illuminate the individual lamps 89 when their corresponding switches or contacting devices 58 are closed by the playing ball.

At the commencement of play, the center "3" or "free" lamp in each panel is illuminated without the necessity of rolling the playing ball through a corresponding hole 31,

(Plaintiff's Exhibit No. 2)

such as is necessary for the rest of the lamps in the annunciator. To this end, lines 83, the feed contacts 84 of Switches S, and conduits 85, 95 and 96 in each unit are inter-connected to one terminal of the "free" lamp. The current is returned from said "free" lamps through conduits 97 and thence through conduits 91 and 92 to the main supply line 77 without the interposition of the usual switches 58 thereby completing a circuit originating in the conduit 78.

Upon the closing of five switches or contact devices 58 in a row, as for example the five contact devices illustrated in Figure 9 (which, of course, comprise only a portion of the entire system of contacts associated with each annunciator, there being twenty-four such contacting devices in each annunciator and one "free" lamp), it is desired that the annunciator lamps in the winning unit remain illuminated but that those in the remaining playing units become de-energized. It is also desired that the superior numeral lamp 22 designating the winning panel should become illuminated to signalize the winner.

First, having reference to the mechanism and circuit by means of which all playing units, other than the winning unit, are de-energized, it will be remembered that each of the twelve selecting bars 66, 67, 68, 69, etc., (Figures 4 and 7) corresponds to one of a group of five vertical, horizontal or diagonal lamps in a row on the annunciator. Such corresponding selecting bar which is

(Plaintiff's Exhibit No. 2)

released upon the making of a winner, operates to tilt and close the mercury switch M on the winning machine, thereby permitting a flow from the main conduit 77 through conduits 92 and 93, thence through the mercury switch M to energize the holding relay 98 (Figures 4 and 9) in the winning unit by way of a further conduit 99 connected to the mercury switch M. From the coil of the holding relay 98, conduits 122 and 100 carry the current through the feed contact 84 of the switch S and by way of conduit 83 to the main line 78, thus completing a circuit through the coil of the holding relay 98; shunting the current to supply line 78 adjacent the condenser C along a holding circuit, as follows, to keep the lamps burning in the winning units: The holding relay 98, being energized, actuates the switch S, thereby breaking the above described feed between the feed contact 84 and conduit 83, but remaking the holding circuit connection by means of a holding contact 84 on conduit 101, and also through conduits 102, 103, 104 and 114 to connect again to supply line 78.

Actuation of the switch S by the relay 98 in the winning unit thus enables the annunciator lamps 89 in the winning unit to remain on. Simultaneously said actuation of switch S causes illumination of the superior numeral 22 designating the winning unit. The first of these results is accomplished as stated by the closing of the feed contact 84 with the feed terminal 84' on the conduit 101. The flow through the annunciator panel 21 and its lamps



(Plaintiff's Exhibit No. 2)

(starting from the switch S) is then through conduits 101, 103, 104, 114, 115, coil 116, supply line 77, and lines 92 and 91, into the annunciator panel and its lamps as previously described, then back through conduit 85 and again through the feed contact 84 and wire 101 establishing a complete holding circuit for the lamps in the winning panel.

In order to accomplish the second named purpose of illuminating the superior numeral lamp 22 in the winning unit, the other holding contact 109 in the switch S establishes a circuit in the superior lamp (for convenience again beginning at the switch S) through wires 108, 107, coil 106 and conduits 105, 114, 115, 77, 92, (and also the holding circuit 93, M, etc., as above) 91, 97 and 118 to the winning lamp 22, then through conduits 119, 120 and 122, holding coil 98, holding contact 109 and wire 108, or from wire 120 through 100, contact 84 and wire 101.

In order to accomplish the other purpose of de-energizing all annunciator lamps other than the winner, the main holding relay 106 for all the units operates a switch 112 to de-energize the main supply line 78 to all of the units. To this end, a master feed circuit 113-114' connects between power conductors 75 and 76. The feed circuit includes a main feed relay 111 and a switch 112 in series. The energizing of the coil of the main feed relay 106 by the holding circuit of the winning unit (described in the

(Plaintiff's Exhibit No. 2)

paragraphs immediately preceding) breaks the circuit in the main line 78 by opening the switch 112 which cuts the circuit to the relay 111 and allows the main switch 110 to open. Thereby all lamps including the "free" lamp on all annunciator panels except the winner are extinguished, the latter remaining continuously energized through the holding circuit established by its mercury switch M and holding relay 98<sup>9</sup> above described. To reiterate, scoring a win, actuates a switch M in the winner and energizes main holding relay 106 which attracts and opens switch 112, which, in turn, de-energizes the master feed relay 111 thereby allowing switch 110 to open and cut out the main supply line 78 leading to all machines. The winner is designated and remains illuminated by its holding circuit through its holding relay while all other playing units go dead.

This condition of illumination of the numeral 22 and the annunciator panel of the winner prevails until the cancel lever 41 is thrown by the operator, tilting and opening the mercury switch, breaking the circuit in the winner's holding relay 98 and permitting the switch S to return to the position illustrated in full lines in Figure 9, as at the commencement of play. The circuit to the main holding relay 106 is thus de-energized allowing the switch 112 to close, remaking the circuit through the main feed relay 111, which thereupon re-establishes the circuit in line 78 to all playing units through the closing

(Plaintiff's Exhibit No. 2).

of the main feed switch 110. The central "3" or "free" lamp is then illuminated in all of the units while all other lamps in all of the units, including those of the winner, are extinguished. The throwing of the control lever 41 also operates through the control arms 70 in each unit to reset the spring contacts 57 and 58 in all units ready for play.

### MODE OF OPERATION OF FAWN GAMES

Players may be seated before each of the machines in the bank, respectively, all the lights being out upon all of the boards. Play is initiated by an Operator positioned in an isle (see Figure 8) behind the bank of machines. This Operator manipulates a cancel lever 41 connected to a central control rod which then rotates in a given direction to turn on the central light on each panel and simultaneously turns off all panel lights that may be on from preceding games, leaving only the #3 central or "free" light illuminated in each panel.

Play may now begin. Each operator attempts to place his ball through holes corresponding with five lights in a row either vertically, horizontally or diagonally upon the back panel. When a player has caused the lighting of such a row of five lights a signal bell is automatically sounded and all lights including the central light on all of the backboards, except that of the winner, are extinguished while at the same time the superior numeral

(Plaintiff's Exhibit No. 2)

22 designating the game and panel number is illuminated to further indicate the winner. After the winning player is thus signalized, a mercury switch is actuated as a result of which continued play in the remaining machines is ineffective to cause further illumination of the lights of the backboard in any of the machines.

Play may again be initiated by the movement by the Operator of the cancel lever in the same direction as heretofore noted, inasmuch as the same is automatically returned to its starting position following the making of a winner so as to extinguish all lights but those on the winning board as heretofore noted.

HUEBNER, MALTBY & BEEHLER and  
ALBERT M. HERZIG

By Albert M. Herzig

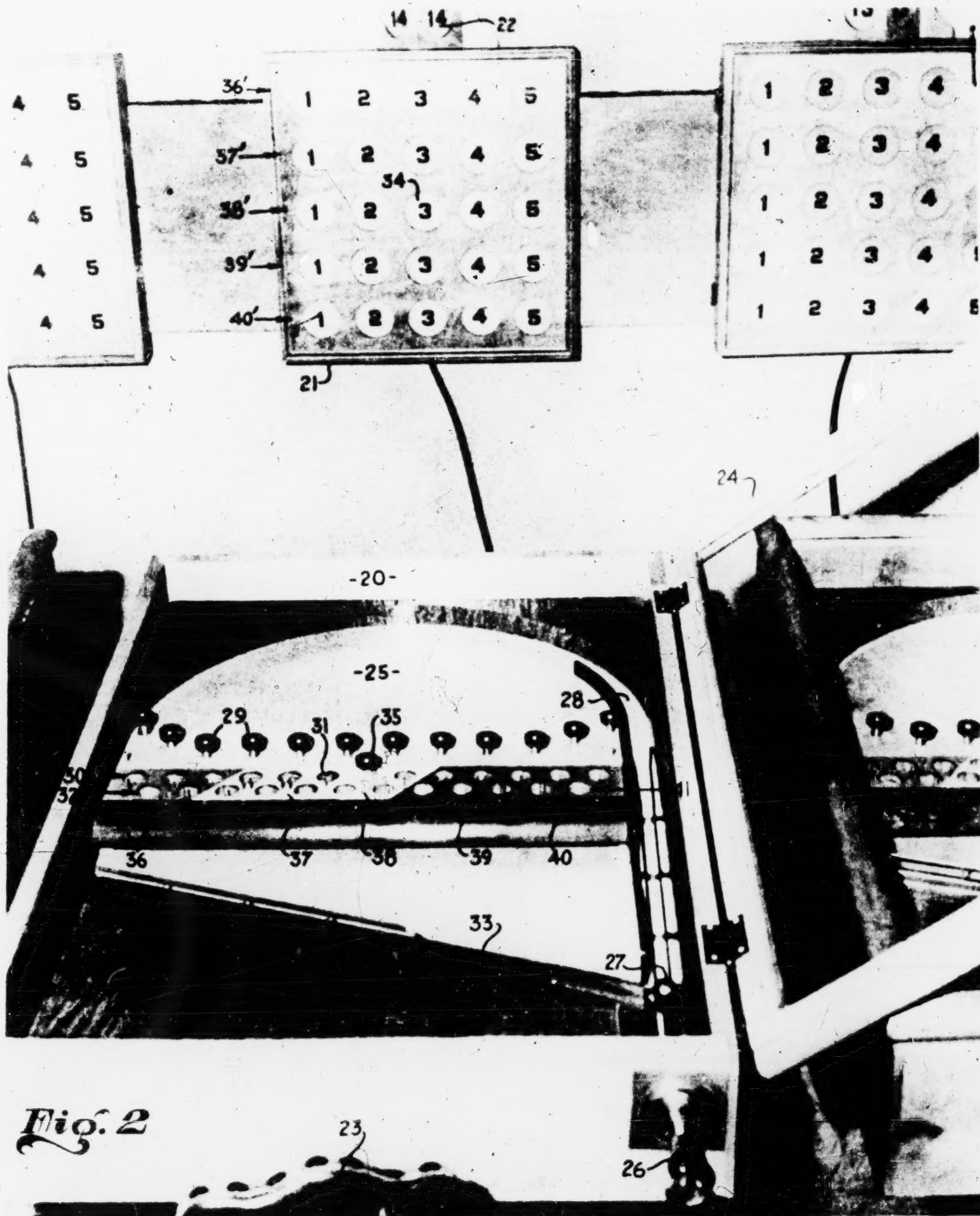
Albert M. Herzig

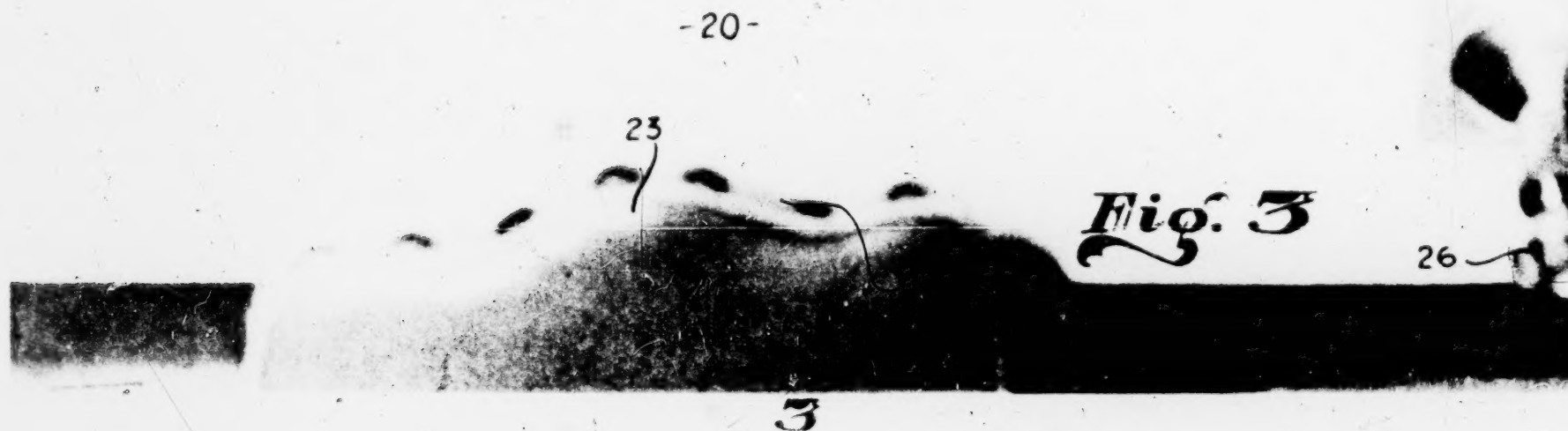
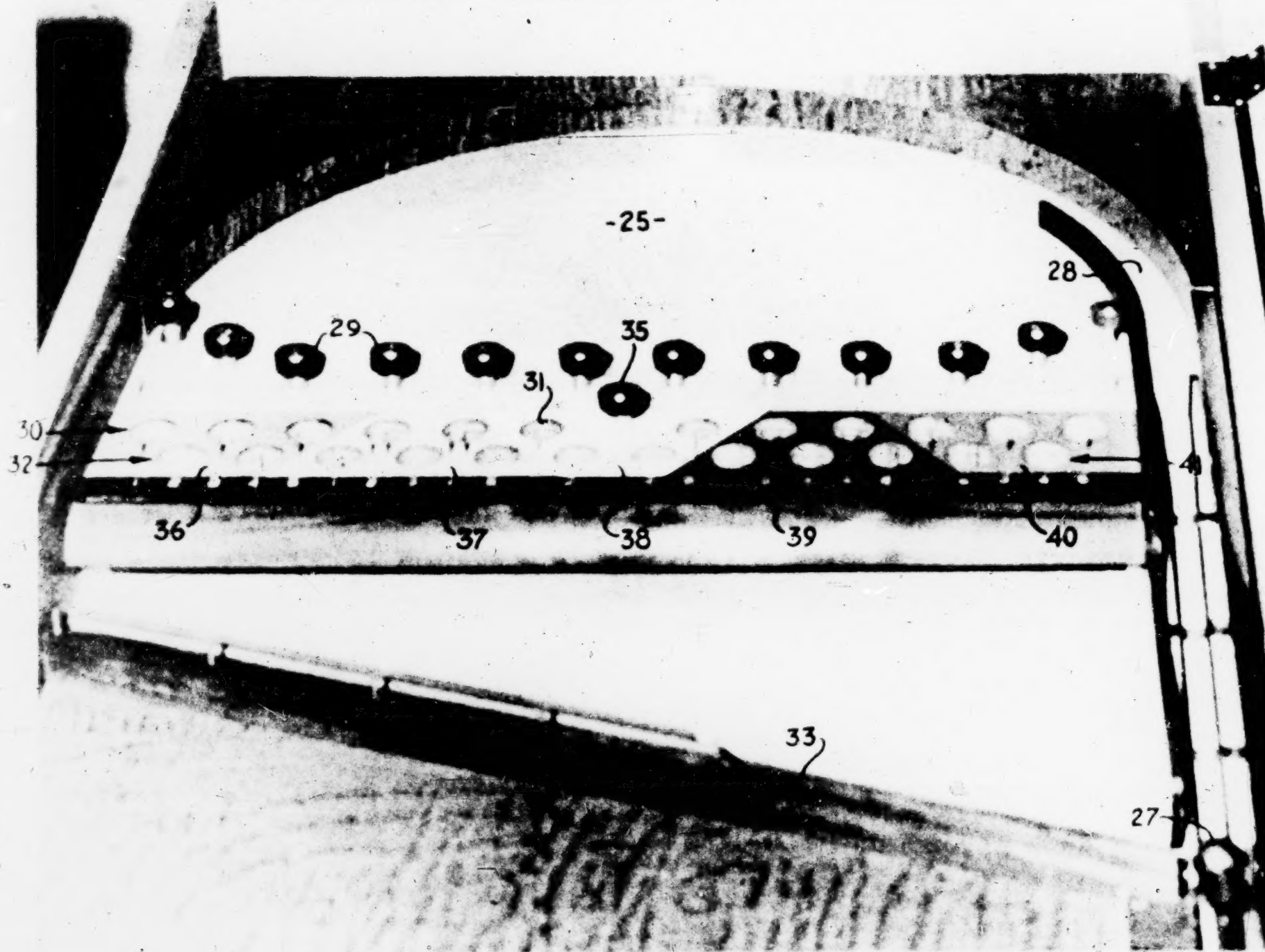
Attorneys for Plaintiff





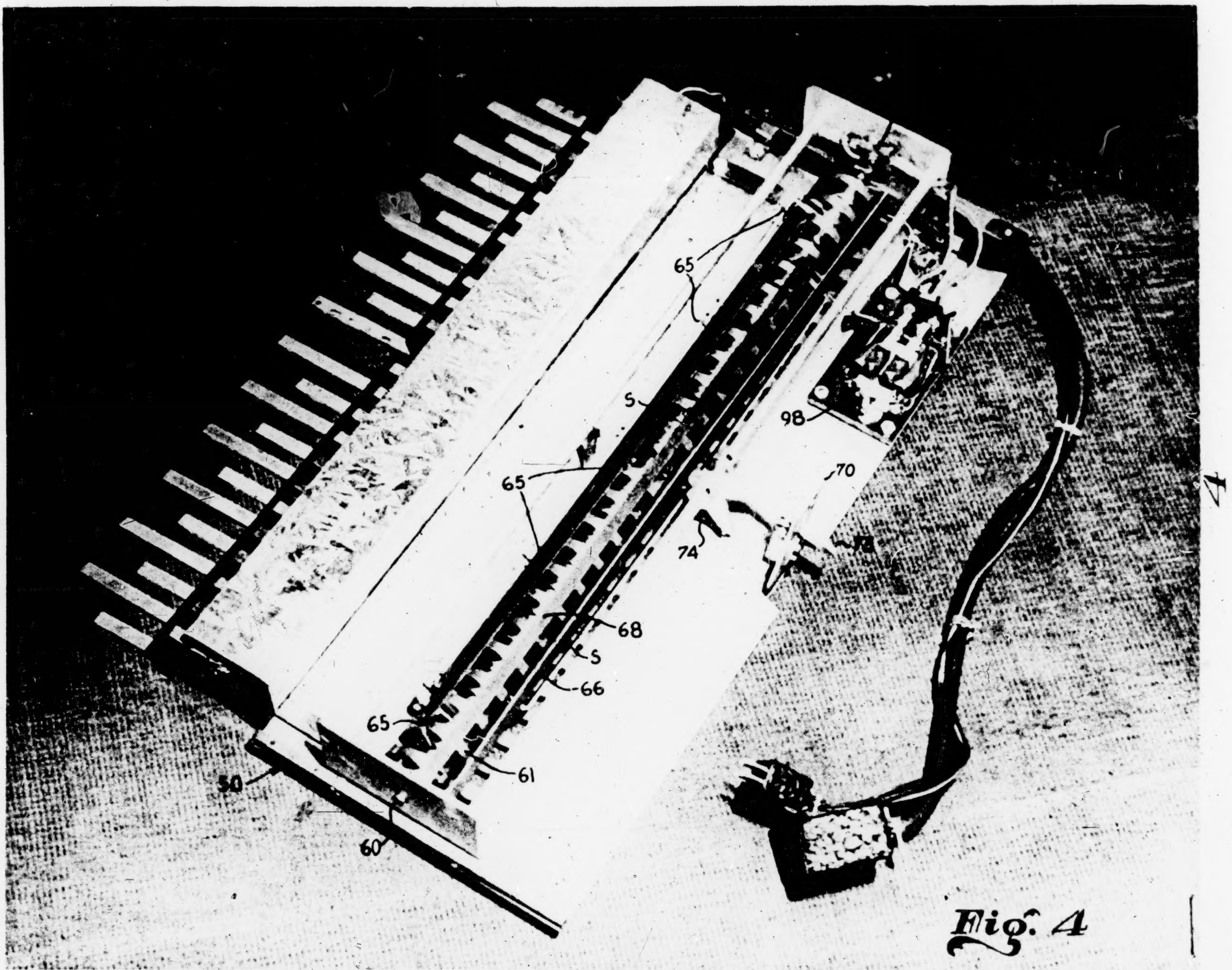




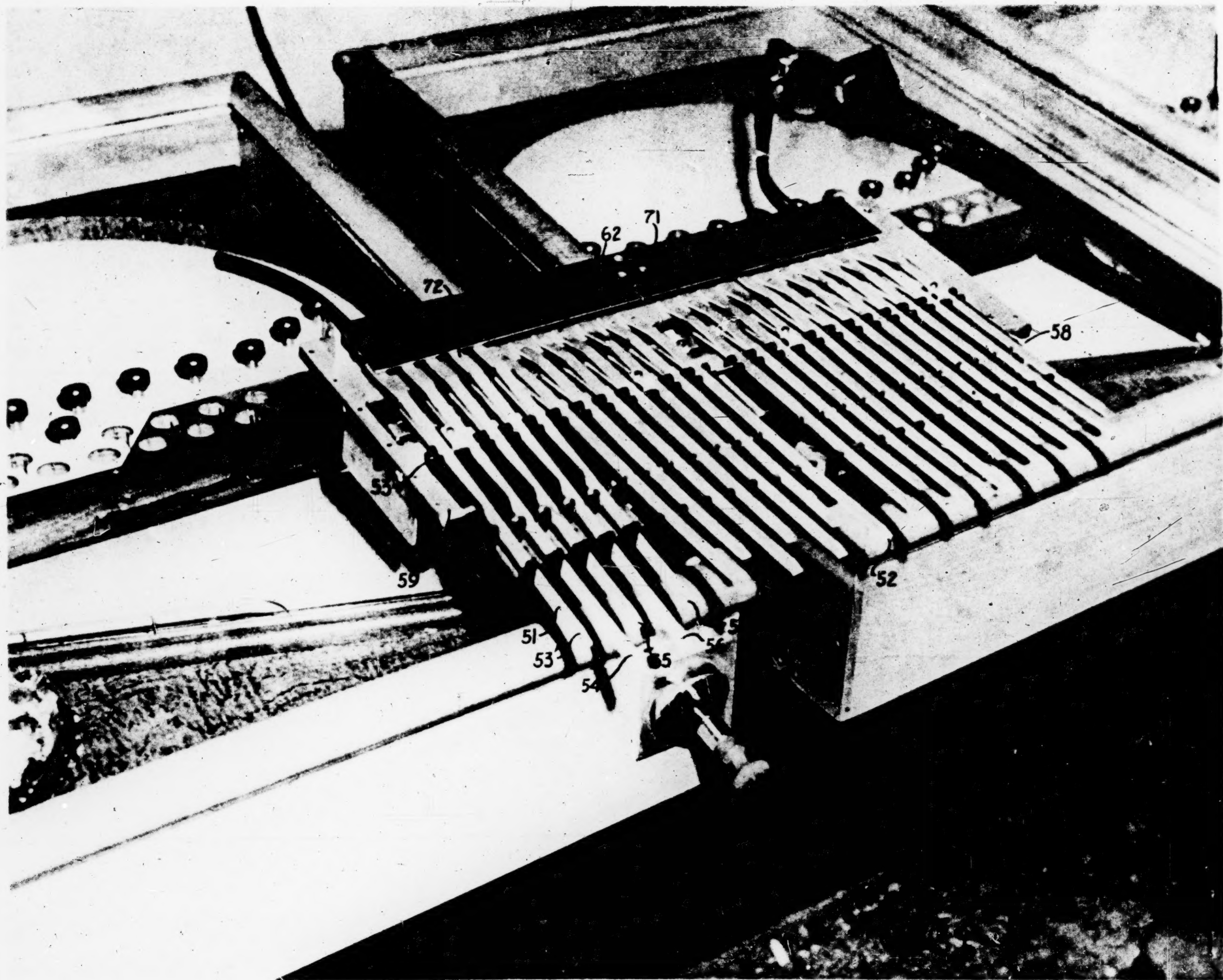


**Fig. 3**





*Fig. 4*





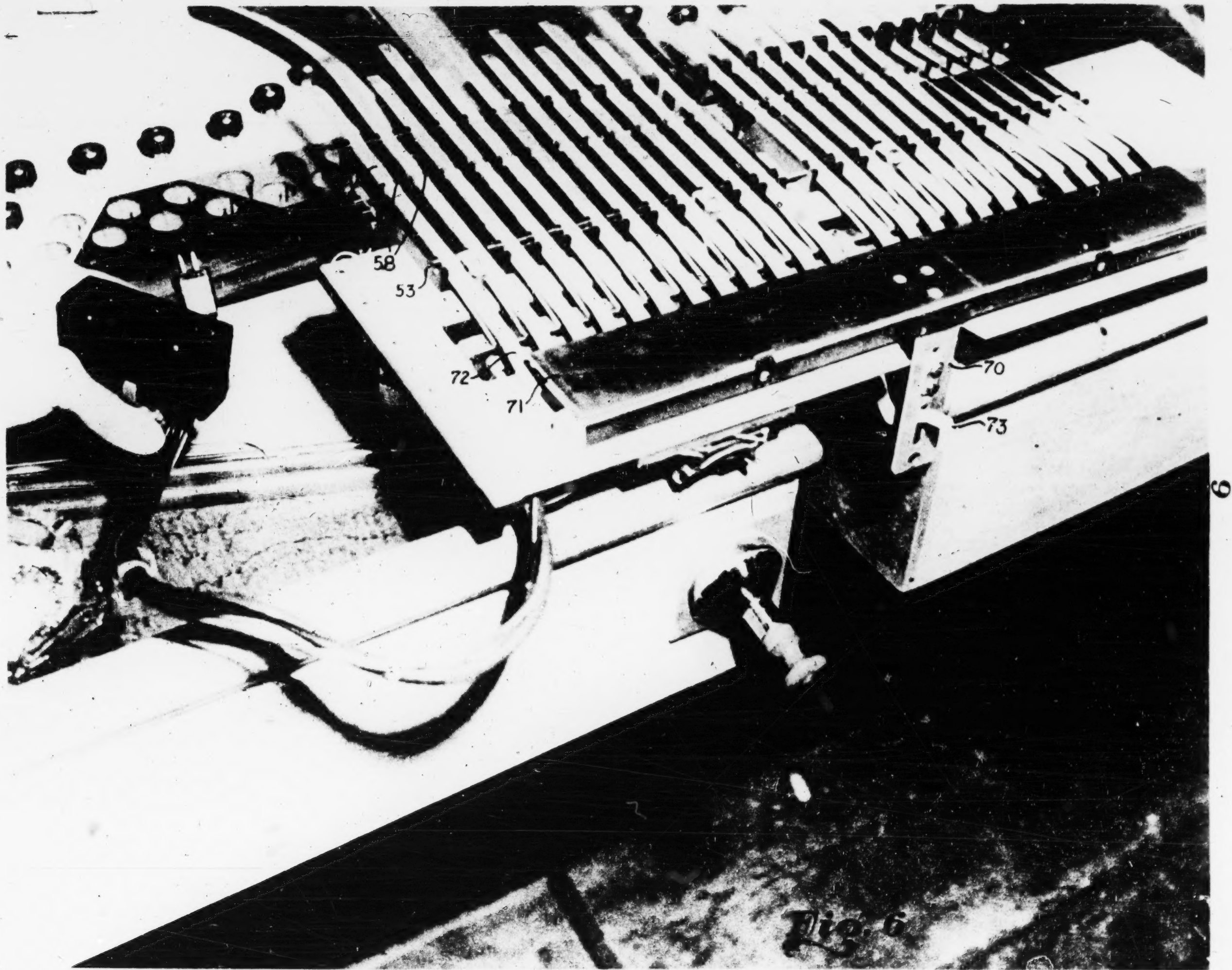
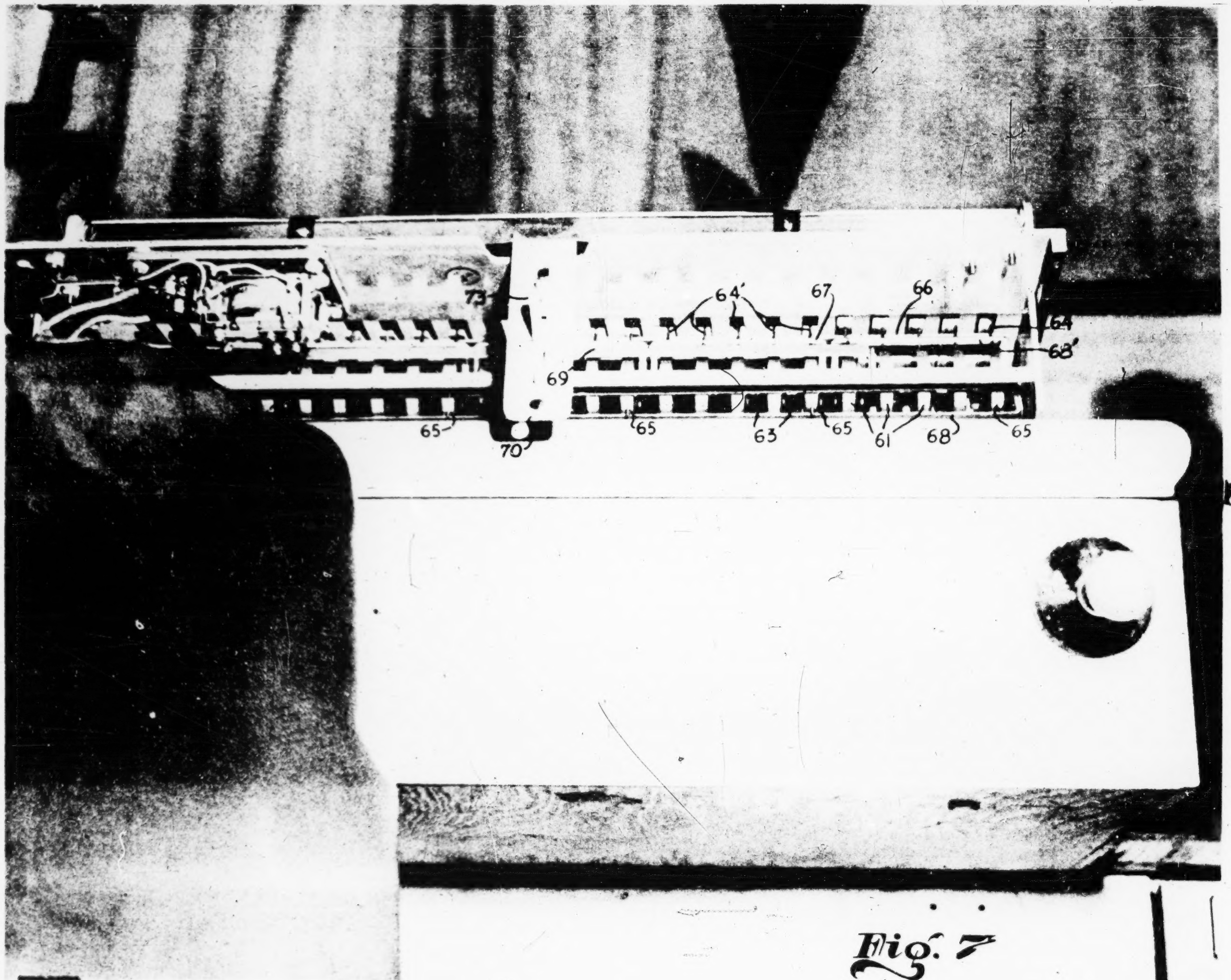


Fig. 6

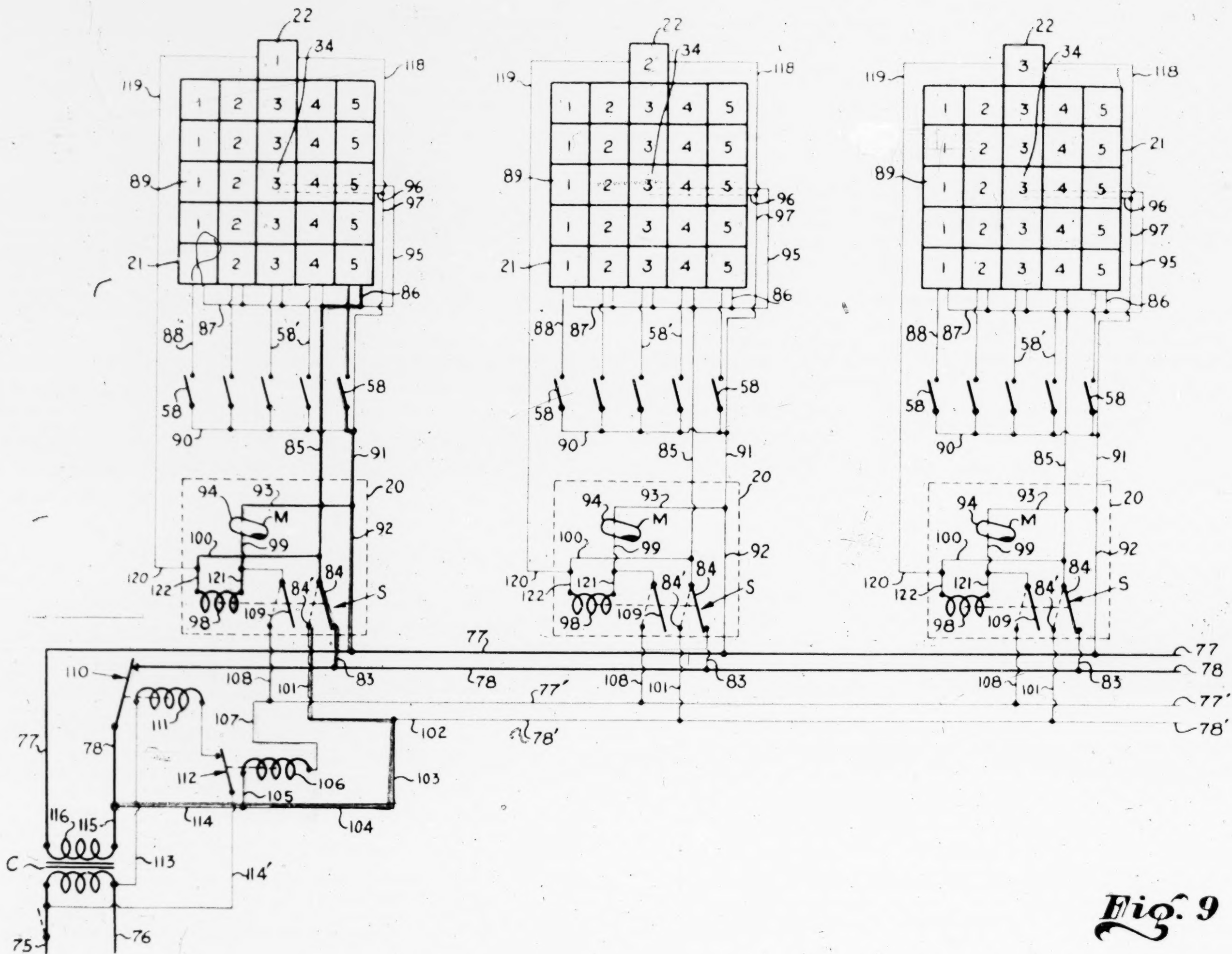




*Fig. 7*







**Fig. 9**

\* \* \* \* \*

Received copy of the within Description this .....  
day of ....., 194. ... Gerald Desmond, Attorney  
for Defendants.

[Endorsed]: Filed Oct 10 1946 Edmund L. Smith,  
Clerk. By Edw. F. Drew, Deputy Clerk.

Case No. 5566-Y Civ. John T. Gibbs vs. Todd C.  
Faulkner et al. Plf. Exhibit 2. Date 2-19-47. No. 2 in  
Evidence. Clerk, U. S. District Court, Sou. Dist. of  
Calif. John A. Childress, Deputy Clerk.

## [PLAINTIFF'S EXHIBIT NO. 3]

Eastern District of New York, ss:

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the annexed is a true copy of an original Findings of Fact and Conclusions of Law on file and remaining of record in my office, re: E-7717 - Gibbs & Ano. vs. T. Z. R. et al.

In Testimony Whereof, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 9th day of January, in the year of our Lord one thousand nine hundred and forty-seven and of the Independence of the United States the one hundred and seventy first.

(Seal)

Percy G. B. Gilkes

Clerk.

By Nan V. McNabb —

Deputy Clerk.



(Plaintiff's Exhibit No. 3)

United States District Court  
Eastern District of New York  
Equity No. 7717.

John T. Gibbs and Kahn's Amusement Corporation,  
Plaintiffs, against T. Z. R. Amusement Corporation, Sam  
Taffet, Irving Taffet, Herman Rapps and Samuel Zindel,  
Defendants.

NOTICE OF SETTLEMENT OF FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Please Take Notice that on Thursday, the 4th day of  
June, 1936, at 10 o'clock in the forenoon I will present  
the proposed Decision containing findings of fact and  
conclusions of law, a copy of which is hereto annexed  
for settlement before Honorable Judge Byers of the  
United States District Court for the Eastern District of  
New York, in the Post Office Building, Washington  
Street, Brooklyn, County of Kings, City and State of  
New York, and also of the Interlocutory Decree, a copy  
of which was served on you on the 29th day of May,  
1936.

Yours, etc.

Max D. Ordmann

Max D. Ordmann

Attorney and Counsel for Plaintiffs

233 Broadway

New York City

Dated May 29, 1936

New York, N. Y.

(Plaintiff's Exhibit No. 3)

To:

Silberman & Steinfeld, Esqs.  
Attorneys for Defendants  
16 Court Street  
Brooklyn, New York

United States District Court  
Eastern District of New York

Equity No. 7717.

John T. Gibbs and Kahn's Amusement Corporation,  
Plaintiffs, against T. Z. R. Amusement Corporation, Sam  
Taffet, Irving Taffet, Herman Rapps and Samuel Zindel,  
Defendants.

### DECISION

The issues in this case having been tried before me on the 15th and 16th day of April, 1936, and the parties hereto having appeared herein by their respective attorneys, I now decide and find as follows:

### FINDINGS OF FACT

First: That this suit is brought under the patent laws of the United States for infringement of Letters Patent of the United States #1,906,260, granted May 2, 1933 to John T. Gibbs on an application filed by him February 16, 1930 on games.

Second: That said John T. Gibbs is one of the plaintiffs herein, is a citizen of the United States and resident of Long Beach, County of Nassau and State of New

(Plaintiff's Exhibit No. 3)

York and Kahn's Amusement Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York and the other plaintiff herein and at the time of this suit had its principal place of business at 1220 Surf Avenue, Coney Island in the Borough of Brooklyn, City and State of New York.

Third: That the plaintiff Kahn's Amusement Corporation is an exclusive licensee of said plaintiff John T. Gibbs under said Letters Patent in suit, to use said patented game in the State of New York.

Fourth: That the defendant T. Z. R. Amusement Corporation is a corporation organized and existing under the laws of the State of New York with a capital stock of \$5000 divided into 100 shares of \$50 par value each and has its principal place of business at Coney Island, Brooklyn, City and State of New York.

Fifth: That the defendants Sam Taffet, Irving Taffet, Herman Rapps and Samuel Zindel are citizens of the United States and residents of Brooklyn, County of Kings, City and State of New York, and are stockholders of said corporate defendant, each owning 25 shares of its said stock.

Sixth: That on the 16th day of February, 1931, said plaintiff John T. Gibbs made an application to the Commissioner of Patents of the United States for the Letters Patent  $\approx$ 1,906,260 in suit on games, being then a resident of Long Beach, County of Los Angeles, State of California, and having complied with all requirements of the Statutes of the United States then in force, said Let-

(Plaintiff's Exhibit No. 3)

ters Patent were granted to said John T. Gibbs dated the 2nd day of May, 1933.

Seventh: That prior to said application, to wit, on December 19, 1930, said John T. Gibbs signed an agreement, in evidence, with one Cannon Electric Development Company of Los Angeles, California, based on a memorandum of October 29, 1930, and which recited that it is a sales promotional measure.

Eighth: That said agreement does not grant or promise to grant to said Cannon Electric Development Company any license or other rights under said Letters Patent in suit and the evidence does not show that said Cannon Electric Development Company is a licensee under said Letters Patent in suit, but does show that said John T. Gibbs never did or intend to grant to said Cannon Electric Development Company a license under his said Letters Patent in suit, and that he and his associate by said agreement reserved to themselves the exclusive right to sell said patented games.

Ninth: That prior to said agreement said Gibbs did originally communicate to James Cannon, the president of said Cannon Electric Development Company, his conception of the idea of the game described, shown and claimed in said Letters Patent in suit, the final form of said game, the method of play, the result aimed at, the electrical circuits and the means and instrumentalities for constructing said games, both orally and on drawings, and that said Cannon subsequently built the electrical units for the games in accordance with the conceptions and explanations given him by said Gibbs.

(Plaintiff's Exhibit No. 3)

Tenth: That said plaintiff John T. Gibbs has gone to great trouble and expense in developing and perfecting said patented game and introducing and making it available to the public and that said plaintiff Kahn's Amusement Corporation, the licensee under said patent in suit,

MWB USDJ

has gone to ~~great~~ trouble and expense in acquiring said exclusive license from said patentee John T. Gibbs, in procuring leases on business properties for the use and operation of said patented game and in purchasing and installing said patented games at its said place of business in Coney Island, Brooklyn, City and State of New York, and Long Beach, County of Nassau and State of New York and that said games have become a source of

MWB USDJ

income and ~~large~~ gains and profits to both of said plaintiffs.

Eleventh: That said John T. Gibbs during the period between 1930 and 1935 sold and installed a considerable number of his said patented games at numerous amusement places in the United States and in England and

definite MWB USDJ

that ~~considerable~~ commercial success has attended the introduction and operation of said patented games under licenses and with permission of said John T. Gibbs and that the validity of the patent in suit and the originality and novelty of said patented games have been generally acquiesced in.

Twelfth: That the plaintiff Kahn's Amusement Corporation under its exclusive license to use in the State of New York said patented games, installed and commenced



(Plaintiff's Exhibit (No. 3))

the operation of said patented games at its said place of business at Coney Island about June 7, 1935, and displayed a sign on the wall in said place of business bearing prominently the words "patented" with the number of the patent in suit.

Thirteenth: That the defendant T. Z. R. Amusement Corporation and said individual defendants, whose place of business was but a few doors away from said plaintiff's place of business, jointly and individually during the month of June, 1935, visited said plaintiff's business and saw said patented games in the course of their installation and operation, and also procured a copy of said Letters Patent in suit, and that notwithstanding the said notice of said Letters Patent, a few weeks after the installation of said patented games at said plaintiff's place of business made, installed and used and caused to be made, installed and used at their said place of business games substantially identical with those of the plaintiffs' and as described, shown and claimed in said Letters Patent in suit.

Fourteenth: That the plaintiffs in June, 1935, sent written notice to said defendants demanding that they cease infringement of the Letters Patent in suit, but that said defendants ignored said notice and continued to

MWB USDJ as above stated  
operate said patented games and install the same at other  
the Borough City,  
places in A Brooklyn and Long Beach, New York A with-  
out the permission or license from and against the protest  
of the plaintiffs herein.

(Plaintiff's Exhibit No. 3)

Fifteenth: That the defendants by their said acts did individually and jointly injure the plaintiffs' business to

MWB USDJ

a very considerable extent ~~and ruined plaintiffs'~~ sum-  
during the in the Borough of Brooklyn  
mer season of 1935 at Coney Island ~~^~~ and Long Beach,

City

New York ~~^~~ and did encourage others to commit similar  
~~acts and~~ thereby ~~still more~~ injure said plaintiffs' business  
and deprive and prevent said plaintiffs from receiving all  
the gains and profits which they would have derived and  
acquired but for the acts of said defendants.

Sixteenth: That the evidence shows that there was no  
well defined difference between the acts of the individual  
defendants and the corporate defendant, that they spoke  
and jointly  
of themselves as partners, and individually /, instructed,  
managed and supervised the construction, installation and  
operation of said patented games.

Seventeenth: That for the successful operation of the  
game of the Letters Patent in suit there are certain  
structural and functional requirements which are fulfilled  
by the devices set forth in the claims 1 to 10 of said Let-  
ters patent in suit, which are not disclosed or sug-  
gested in any of the games of the prior art, and which  
do not teach the construction, method of operation or  
results obtained and do not fulfill the requirements of the  
structures set forth in any of the claims 1 to 10 of the  
Letters Patent in suit.

(Plaintiff's Exhibit No. 3)

### CONCLUSIONS OF LAW

First: That said plaintiff John T. Gibbs is the sole and exclusive owner of the entire right, title and interest in and to said Letters Patent #1,906,260.

Second: That said John T. Gibbs is the first, sole, true and original inventor of said patented game.

Third: That the game of the Letters Patent in suit as set forth in the claims 1 to 10 of the Letters Patent in suit and the results obtained and the operation thereof are entirely novel over the prior art patents.

Fourth: That Letters Patent of the United States #1,906,260 in suit and each and all of the claims 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are good and valid in law.

Fifth: That the Cannon Electrical Development Company is not a licensee under the patent in suit and, therefore, not a necessary party plaintiff.

Sixth: That the defendant T. Z. R. Amusement Corporation and each of the individual defendants Sam Taffet, Irving Taffet, Herman Rapps and Samuel Zindel have jointly and individually, deliberately and willfully infringed each of the claims of said Letters Patent in suit, by making and using and causing to be made and used without license and permission of the plaintiffs herein said patented games as set forth in each of the said claims 1 to 10 of the Letters Patent in suit.

(Plaintiff's Exhibit No. 3)

Seventh: That the plaintiffs are entitled to and shall receive the decree as prayed in the Bill of Complaint, including a permanent injunction to be issued forthwith and an accounting before a Special Master to be appointed by me, against each of the defendants herein, and to the costs, charges and disbursements of this suit and to have judgment and execution against each of said defendants.

Eighth: That the defendants shall pay the costs of said accounting and fees of said Special Master.

Ninth: That if the defendants desire an appeal and said MWG USDJ will take this appeal within thirty days from the time of the entry of the decree herein and desire the suspension of the injunction pending such appeal and until the determination thereof, the defendants shall file a bond

Fifteen	15,000.00
---------	-----------

in the sum of ~~Fifty~~ Thousand Dollars (~~\$50,000~~) as security for the payment of costs, damages, and profits awarded against them herein and that they shall file with the Master herein monthly reports, under oath, specifying the number of games manufactured and/or sold and/or installed and/or used by them embodying and containing the inventions of the claims 1 to 10, inclusive, and/or any of the said claims of the said Letters Patent in suit and the gross and net income therefrom and that the said defendants move said appeal to a hearing promptly by asking that the same be advanced.

(Plaintiff's Exhibit No. 3)

Tenth: I direct that a decree be entered accordingly.

Mortimer W. Byers

U. S. District Judge

Dated June 5th, 1936.

Brooklyn, New York

Approved:

Attorneys and Counsel for Defendants

Service [illegible] of the within notice of settlement and findings of fact and conclusions of law is hereby admitted this 2nd day of June, 1936. Silberman & Steinfield, Attorneys for Defendants.

\* \* \* \* \*

Case No. 5506-Y Civ. John T. Gibbs vs. Todd C. Faulkner et al. Plf. Exhibit 3. Date 2-19-47. No. 3 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.



[PLAINTIFF'S EXHIBIT No. 4]

Book 39 Page 539

Huebner, Maltby & Beehler and  
Albert M. Herzig  
610 South Broadway  
Los Angeles 14, California  
Michigan 3821

In the District Court of the United States  
Southern District of California  
Central Division

No. 5143-O'C Civil

John T. Gibbs, Plaintiff, vs. Arthur Loeff, Margaret  
Mary Loeff, James Anglemeyer, Douglas Wiser, and  
Loretta Cecilia Wiser, doing business under the fictitious  
firm name of Skill Games, and Loeff Amusement Corpo-  
ration, Defendants.

JUDGMENT BY CONSENT

Upon the consent of the plaintiff and all of the defend-  
ants, and each of them, and upon the annexed Stipulation,  
it is hereby

Ordered, Adjudged and Decreed:

That plaintiff is the owner of United States Letters  
Patent No. 1,906,260, issued May 2, 1933, for an im-  
provement in games, that said Letters Patent is good and  
valid in law, that the defendants, and each of them, except

(Plaintiff's Exhibit No. 4)

the Loeff Amusement Corporation, have infringed said Letters Patent by utilizing and operating games known as Lite-a-Line.

The complaint in the above-entitled matter is dismissed

Book 39 Page 540

as to the defendant, Loeff Amusement Corporation, with prejudice.

The parties to this Judgment by Consent having agreed upon a sum to be paid by the defendants to the plaintiff in lieu of profits, damages and costs, an accounting and injunction is waived, and no costs are to be taxed.

The parties to this Judgment by Consent have and do waive any and all rights to appeal from this Judgment.

Dated: August 27, 1946.

Paul J. McCormick

Judge.

Approved as to form.

Lewis E. Lyon

Lyon & Lyon—By: Lewis E. Lyon

For Defendants

Albert M. Herzig

Albert M. Herzig

For Plaintiff

(Plaintiff's Exhibit No. 4)

Book 39 Page 541

CONSENT AND STIPULATION TO ENTRY OF  
FOREGOING JUDGMENT

The matter in controversy in this suit having been compromised, settled and adjusted, it is hereby

Stipulated and Consented by and between the plaintiff and the defendants, Arthur Loeff, Margaret Mary Loeff, James Anglemeyer, Douglas Wiser, and Loretta Cecilia Wiser, doing business under the fictitious firm name of Skill Games, and Loeff Amusement Corporation, through their respective attorneys, that the foregoing Judgment may be entered without further notice to either party.

Dated: August 27, 1946.

Lewis E. Lyon

Lyon & Lyon

By: Lewis E. Lyon

Attorney for Defendants

Albert M. Herzig

Albert M. Herzig

Attorney for Plaintiff

Judgment entered Aug 27 1946 Docketed Aug 27 1946  
Book 39 Page 539 Edmund L. Smith, Clerk. By P. D.  
Hooser Deputy.

[Endorsed]: Filed Aug. 27, 1946. Edmund L. Smith,  
Clerk. By P. D. Hooser, Deputy Clerk.

Case No. 5566-Y Civ. John T. Gibbs vs. Todd C.  
Faulkner et al. Plf. Exhibit 4. Date 2-19-47. No. 4 in  
Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif.  
John A. Childress, Deputy Clerk.

## [PLAINTIFF'S EXHIBIT NO. 5]

Book 41 Page 408

Huebner, Maltby & Beehler and  
Albert M. Herzig  
610 South Broadway  
Los Angeles 14, California  
Michigan 3821  
Attorneys for Plaintiff

In the United States District Court  
Southern District of California  
Central Division

No. 5565-W Civil

John T. Gibbs, Plaintiff, vs. C. M. Hicks, J. W. Henderson, T. L. Wall and C. H. Hale, doing business under the fictitious firm name of Skill-A-Line, Defendants.

## JUDGMENT BY CONSENT

Upon the consent of the Plaintiff and all of the Defendants, and each of them, and upon the annexed Stipulation, it is hereby

Ordered, Adjudged and Decreed:

That Plaintiff is the owner of United States Letters Patent No. 1,906,260, issued May 2, 1933, for an improvement in games; that said Letters Patent is good and valid in law; that the Defendants, and each of them, have infringed said Letters Patent by utilizing and operating games known as Skill-A-Line.

That a Writ of Permanent Injunction issue under the seal of this Court restraining the Defendants, and each of them, their confederates, directors, officers, associates, attorneys, clerks, servants, workmen and employees, and those in active concert or participation with them, and each of them, from directly or

(Plaintiff's Exhibit No. 5) Book 41 Page 409  
indirectly manufacturing, making, transferring, selling, installing, using, operating, or causing to be manufactured, made, transferred, sold, installed, used or operated, or threatening to manufacture, make, sell, transfer, install, use or operate said games or devices charged with infringement during this action in any of its forms and from in any way infringing said Letters Patent No. 1,906,260 or contributing to the infringement thereof by others and/or conspiring with others to infringe said Letters Patent in any way whatsoever. In this connection the Defendants are to discontinue the infringing business heretofore conducted by them at 336-338 West Pike, Long Beach, California, inasmuch as they acknowledge the previous infringement of said patent by the operation of said business as to all forms of the game apparatus charged with infringement since the bringing of this action.

The Complaint in the above-entitled matter is dismissed as to all of the defendants, and each of them.

The parties to this Judgment by Consent have agreed to sustain their respective costs; wherefore, an accounting is waived, and no costs are to be taxed.

The parties to this Judgment by Consent have and do waive any and all right to appeal from this Judgment.

Dated this 21 day of January, 1947.

Jacob Weinberger  
Judge

Approved as to Form and Substance:

Harold W. Mattingly

Harold W. Mattingly

Attorney for Defendants

Huebner, Maltby & Beehler and

Albert M. Herzig

By Albert M. Herzig

Albert M. Herzig

Attorneys for Plaintiff



(Plaintiff's Exhibit No. 5)

Book 41 Page 410

CONSENT AND STIPULATION TO ENTRY OF  
FOREGOING JUDGMENT

The matter in controversy in this suit having been compromised, settled and adjusted, it is hereby

Stipulated and Consented by and between the Plaintiff and the Defendants, C. M. Hicks, J. W. Henderson, T. L. Wall and C. H. Hale, doing business under the fictitious firm name of Skill-A-Line, through their respective attorneys, that the foregoing Judgment may be entered without further notice to either party.

Dated this 20th day of January, 1947.

Harold M. Mattingly

HAROLD W. MATTINGLY

Attorney for Defendants.

HUEBNER, MALTBY & BEEHLER and  
ALBERT M. HERZIG

By Albert M. Herzig

Albert M. Herzig

Attorneys for Plaintiff.

Judgment entered Jan 21 1947 Docketed Jan 21 1947  
Book 41 Page 408 Edmund L. Smith, Clerk. By L. B. Figg Deputy.

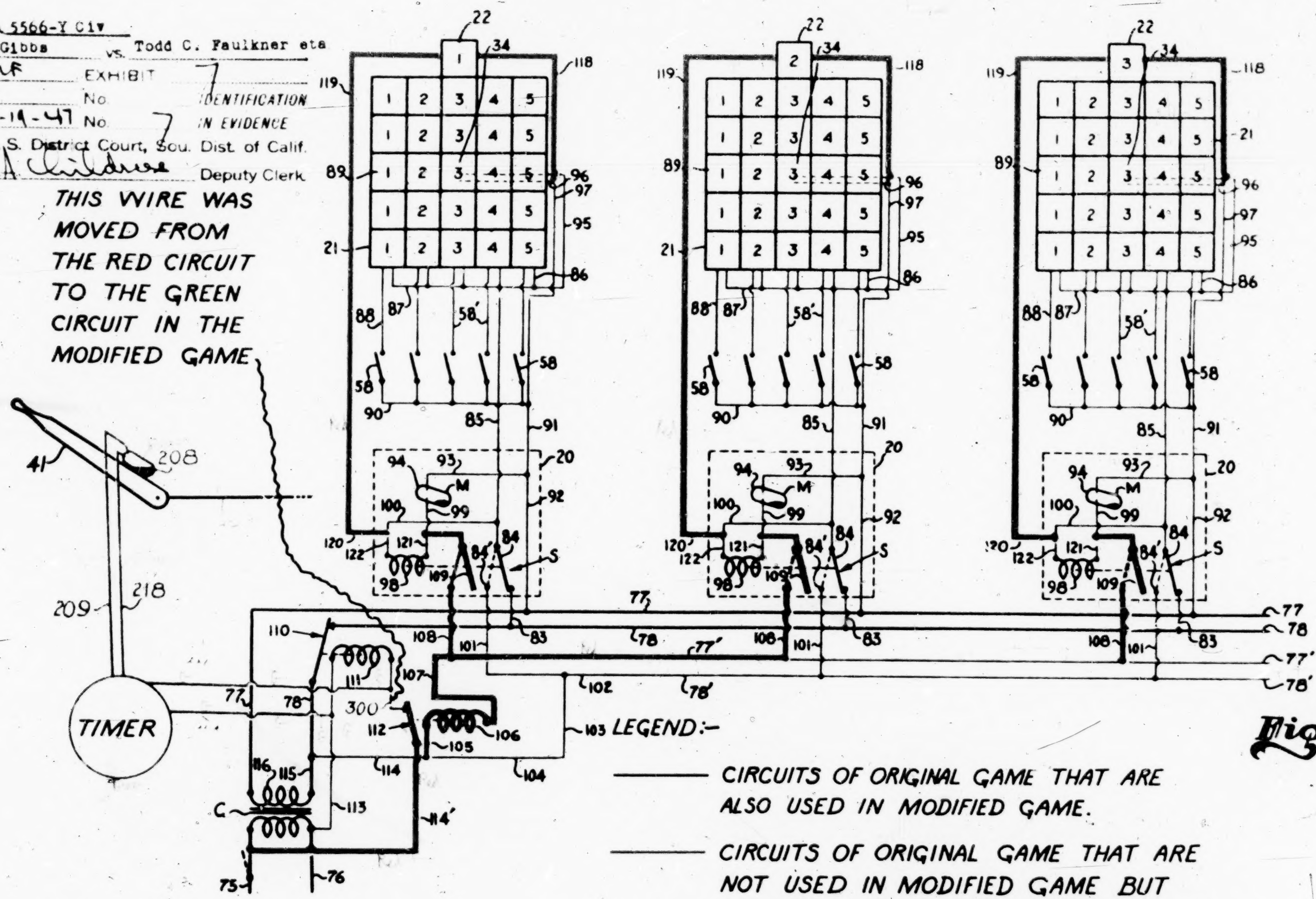
[Endorsed]: Filed Jan. 21, 1947. Edmund L. Smith, Clerk. By L. B. Figg, Deputy Clerk.

\* \* \* \* \*

Case No. 5566-Y Civ. John T. Gibbs vs. Todd C. Faulkner et al. Plf. Exhibit 5. Date 2-19-47. No. 5 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.

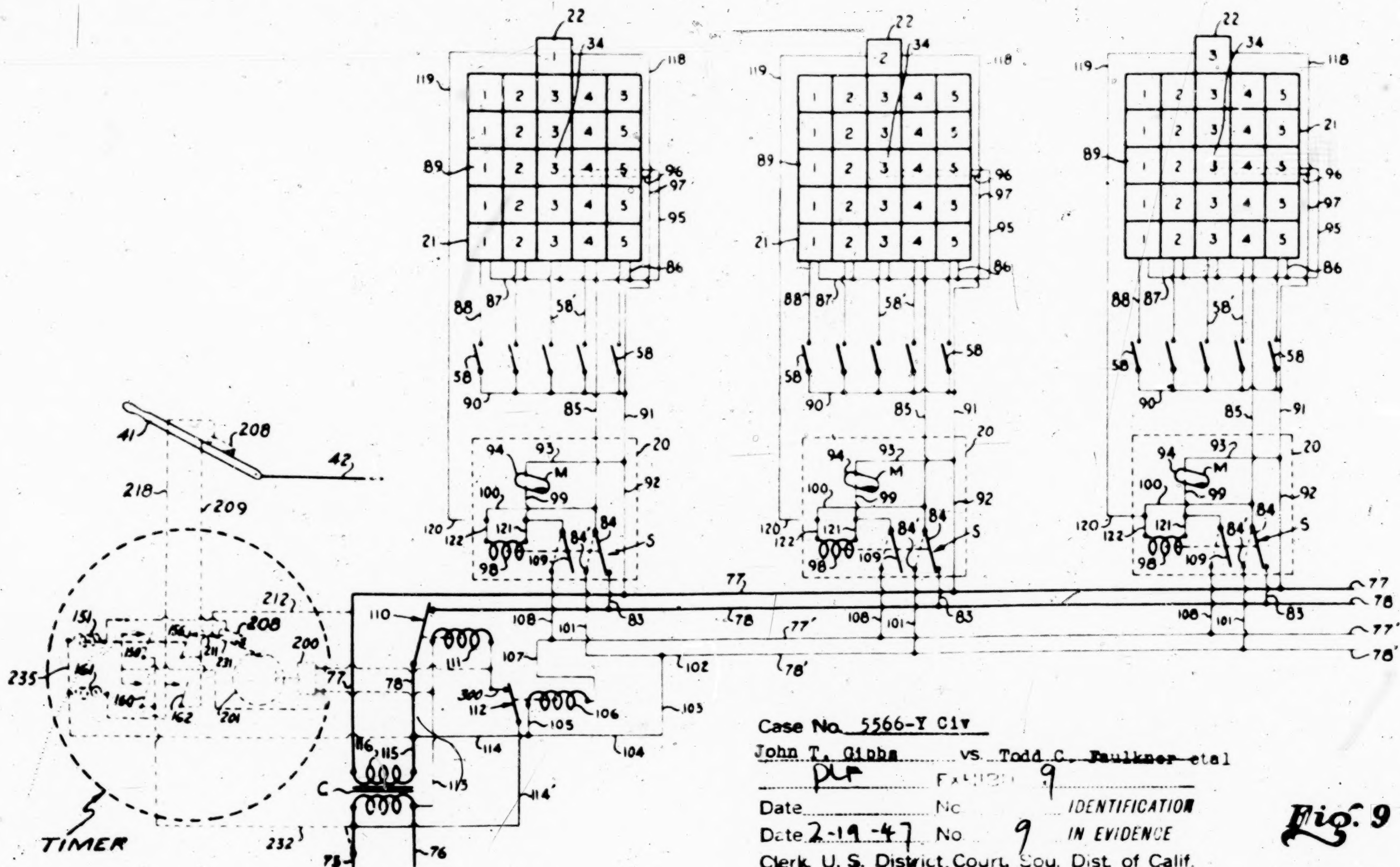
Case No. 5566-Y Civ  
 John T. Gibbs vs. Todd C. Faulkner et al  
 Date 2-19-47 No. 7  
 Date 2-19-47 No. 7  
 Clerk U.S. District Court, Sou. Dist. of Calif.  
 John A. Childress Deputy Clerk

THIS WIRE WAS  
 MOVED FROM  
 THE RED CIRCUIT  
 TO THE GREEN  
 CIRCUIT IN THE  
 MODIFIED GAME



- LEGEND:-
- CIRCUITS OF ORIGINAL GAME THAT ARE ALSO USED IN MODIFIED GAME.
  - CIRCUITS OF ORIGINAL GAME THAT ARE NOT USED IN MODIFIED GAME BUT ARE STILL INTACT BUT NON-FUNCTIONING.
  - CIRCUITS NOT IN ORIGINAL GAME BUT WERE ADDED IN MODIFIED GAME.

Fig. 9



Case No. 5566-Y Civ

John T. Gibbs vs. Todd C. Faulkner et al

Plr

Exhibit 9

Date \_\_\_\_\_ No \_\_\_\_\_

IDENTIFICATION

Date 2-19-47 No 9

IN EVIDENCE

Clerk, U. S. District Court, Sou. Dist. of Calif.

John T. Childress Deputy Clerk

Fig. 9



[DEFENDANT'S EXHIBIT A]

D-36

CLAIM ANALYSIS OF

Gibbs Patent No. 1,906,260

- Claim 3. A game apparatus comprising
- (a) a board (board C),
  - (b) a plurality of contact devices thereon (switches S, 53-54),
    - (1) adapted to be engaged by an object (ball B) moved over the board by a player,
  - (c) a plurality of indicators (lamps 1-25),
  - (d) means for electrically connecting said indicators with a source of electric current and with said contact devices (circuits from transformer 65, wires 59-61, 103, 104, 105),
  - (e) said indicators and said contact devices corresponding
    - (1) in number and
    - (2) arrangement and
    - (3) subdivided into corresponding groups (arrangement of lamps in horizontal, vertical and diagonal rows with apertures in board arranged in corresponding longitudinal, lateral and diagonal rows),
  - (f) means for energizing the said indicators as the associated contact devices are operated (relays R),

(Defendant's Exhibit A)

- (g) an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized (the circuit including conductor 98, the coil of relay R3 and conductor 114'),
- (h) and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized (win light L or bell 69).

D-36

Gibbs Patent No. 1,906,260

Claim 6: A game apparatus comprising

- (a) a plurality of units (game units U1, U2) electrically connected together, each of said units including
  - (1) a plurality of contact devices (switches S, 53-54) and
  - (2) a plurality of indicators (lamps 1-25),
  - (3) corresponding in number and
  - (4) subdivided into corresponding groups (arrangement of lamps and apertures in board in rows identical with each other),
- (b) means for electrically connecting the contact devices with the corresponding indicators (circuits connecting switches S with relays R and lamps 1-25),



(Defendant's Exhibit A)

(c) means for electrically connecting said units together with a source of electric current (wires 59 and 61 supplying power and wire 60 connecting all feed relays R2),

(d) said indicators adapted to be operated when and as objects are moved by the players into engagement with the contact devices,

(e) means whereby when all of the indicators in any group of any one of said units have been operated to complete a winning play

on

(1) the indicators ~~and~~ all of the units except the winning unit will be de-energized (feed relays R2),

(2) while the indicators at the winning unit will remain energized for the purpose described (holding relay R3 on winning unit establishes auxiliary circuit through conductor 120);

D-36

Gibbs Patent No. 1,906,260.

Claim 7: A game apparatus as characterized in Claim 6, including

(f) an independent supplementary signal at each of said units for signaling a winning play to the players (win light L).

(Defendant's Exhibit A)

D-36

Gibbs Patent No. 1,906,260

Claim 8: A game apparatus as characterized in Claim 6, including

(f) an independent supplementary signal at each of said units for signaling a winning play to the players (win lamp L)

(g) and means under the control of an operator for opening and closing the circuits of all of said units simultaneously at will (no means is provided for the closing of circuits of all of the units. Switch 68 may be operated only to cut off power to the units).

D-36

Gibbs Patent No. 1,906,260

Claim 9: A game apparatus comprising

(a) a plurality of electrically connected units (units 1U, 2U) each including

- (1) a game board (board C) with
- (2) a plurality of apertures therein (apertures 26-50) and
- (3) an annunciator (annunciator board A) with
- (4) a plurality of indicators thereon (indicator lamps 1-25),

(Defendant's Exhibit A)

(b) electrical contacts adjacent each of said apertures (switches S)

(1) connected in the circuits of said indicators,

(c) said indicators and said apertures corresponding

(1) in number and

(2) subdivided into corresponding groups whereby when objects are deposited in said apertures by the players at the several units corresponding indicators will be energized,

(d) a supplementary signal circuit on each of said units (conductors 109-110 to win lamp L)

(e) and means for holding said signal circuit open until all of the indicators of any group on each of said units have been energized (no means for holding signal circuit open is found. Circuit to win lamp extends progressively through the series connected contacts on relays R),

Claim 9 - continued:

(f) and for closing said signal circuit when all of the indicators of any unit have been energized (signal circuit is closed when only a portion of the indicators of any unit have been energized and no signal circuit is closed when all of the indicators on a unit have been energized),

(Defendant's Exhibit A)

(g) and means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units (there is no provision for the discontinuing of the signals on all other units and, in fact, there can be no signal circuit completed on any other unit except the winning unit).

D-36

Gibbs Patent No. 1,906,260

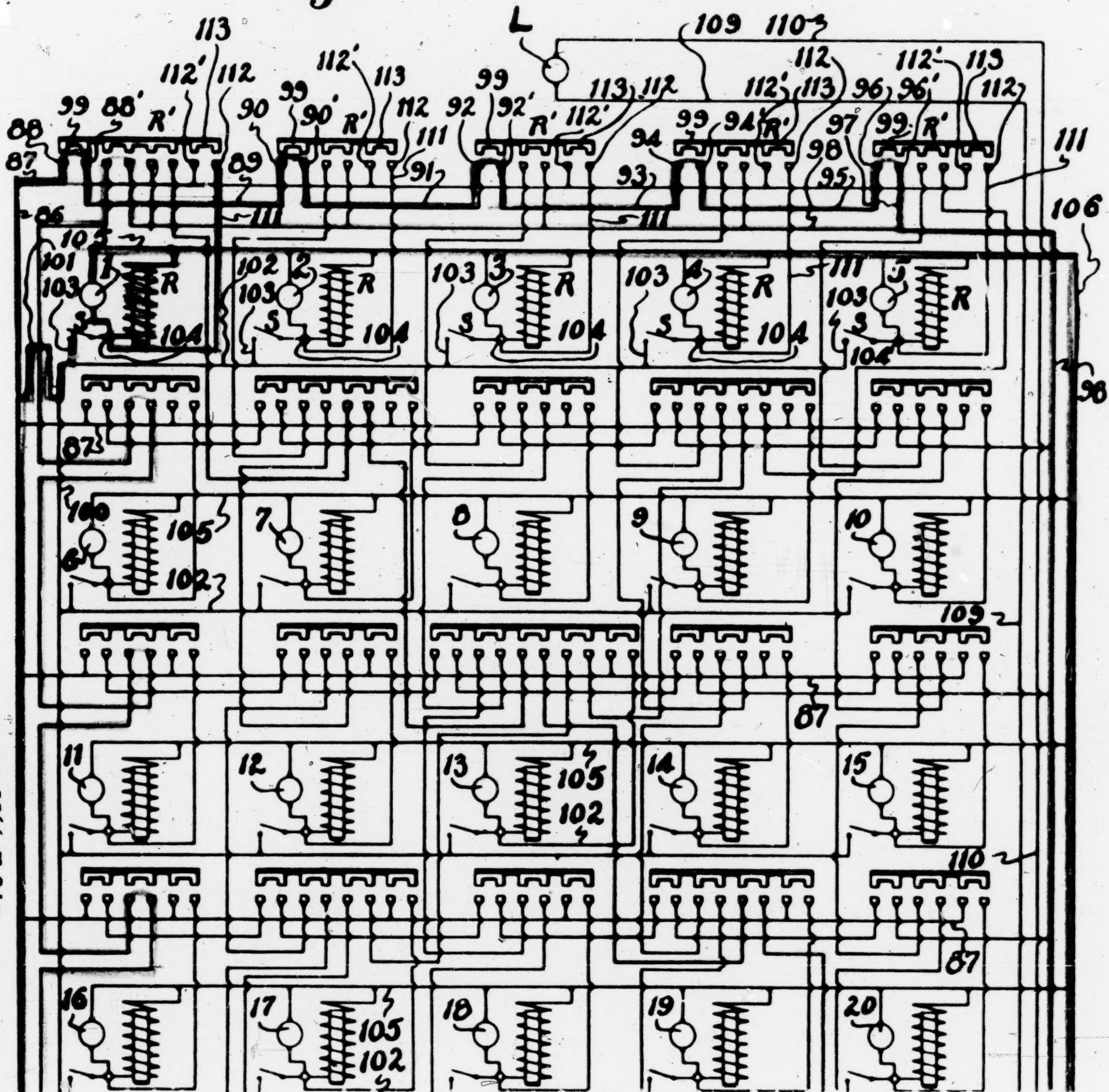
Claim 10: A game apparatus as characterized in Claim 9, including

(h) an audible signal commonly connected with all of said units and adapted to be operated upon the closing of the supplementary signal circuit of any of said units (bell 69 connected across conductors 60 and 61, the circuit to which is completed over conductor 106 and 108).

Case No. 5566-Y Civ. John T. Gibbs vs. Todd C. Faulkner et al. Dft. Exhibit A. Date 2-19-47. No. A in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.



Fig. 6

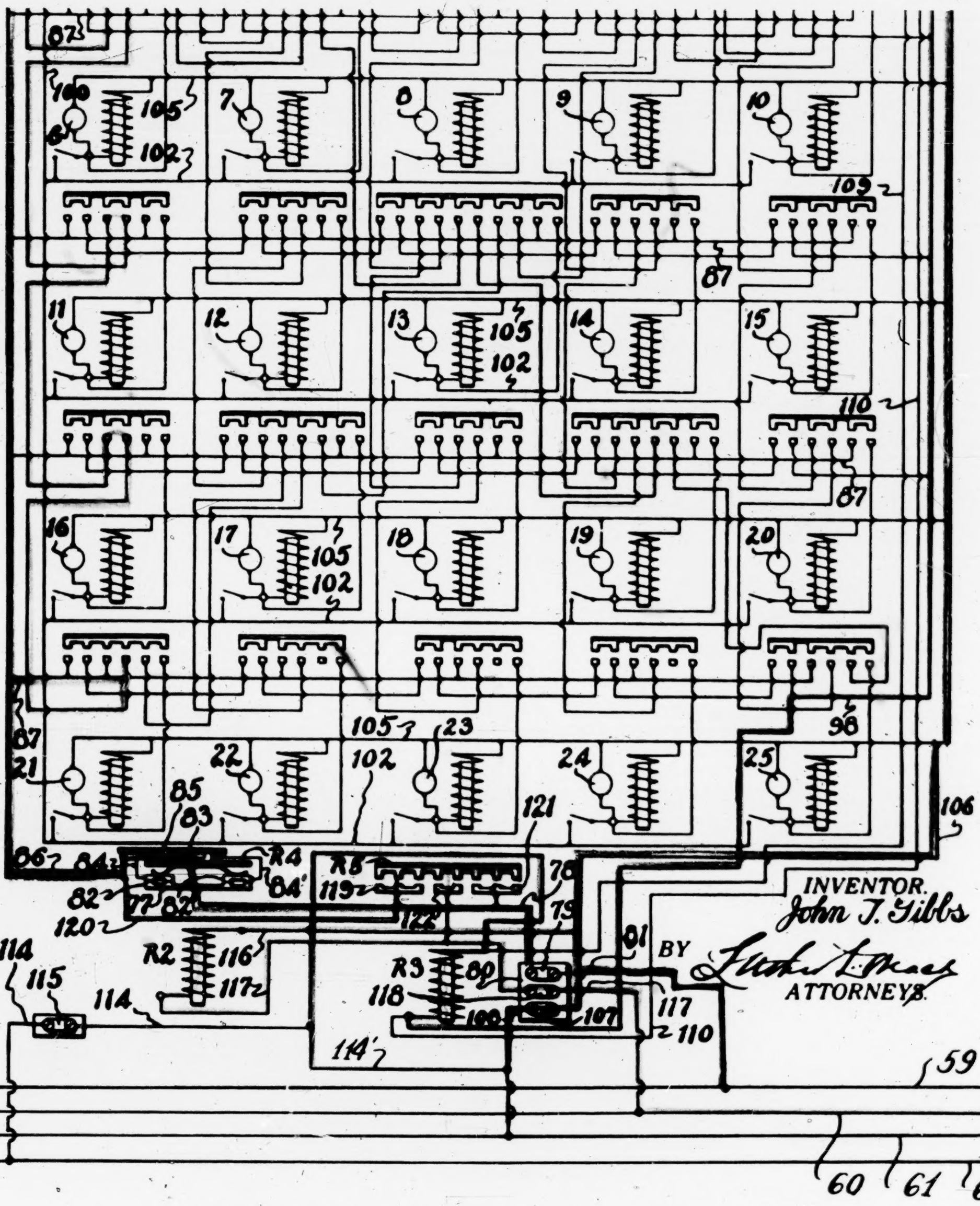


Case No. 5566-T CIV  
John T. Gibbs vs. Todd C. R.  
DFT FX-111 T B

Date 2-19-47 No. B IN E

Clark P. S. District Court, Sou. Dis.

John T. Gibbs, Def



Case No. 5566-T CIV  
John T. Gibbs vs. Todd C. Faulkner et al  
DFT FX-111 T B

Date 2-19-47 No. B IDENTIFICATION

Clark P. S. District Court, Sou. Dist. of Calif.

John T. Gibbs, Deputy Clerk

INVENTOR.  
John T. Gibbs  
BY *John T. Gibbs*  
ATTORNEYS.



[DEFENDANT'S EXHIBIT D]

BOOK OF PRIOR ART PATENTS

Gibbs vs. Faulkner et al.

Case No. 5566-Y Civ. John T. Gibbs vs. Todd C.  
Faulkner et al. Dft. Exhibit D. Date 2-20-47. No. D  
in Evidence. Clerk, U. S. District Court, Sou. Dist. of  
Calif. John A. Childress, Deputy Clerk.

July 24, 1928.

Y. NAKASHIMA

1,678,573

AMUSEMENT DEVICE

Filed Sept. 24, 1927

2 Sheets-Sheet 1

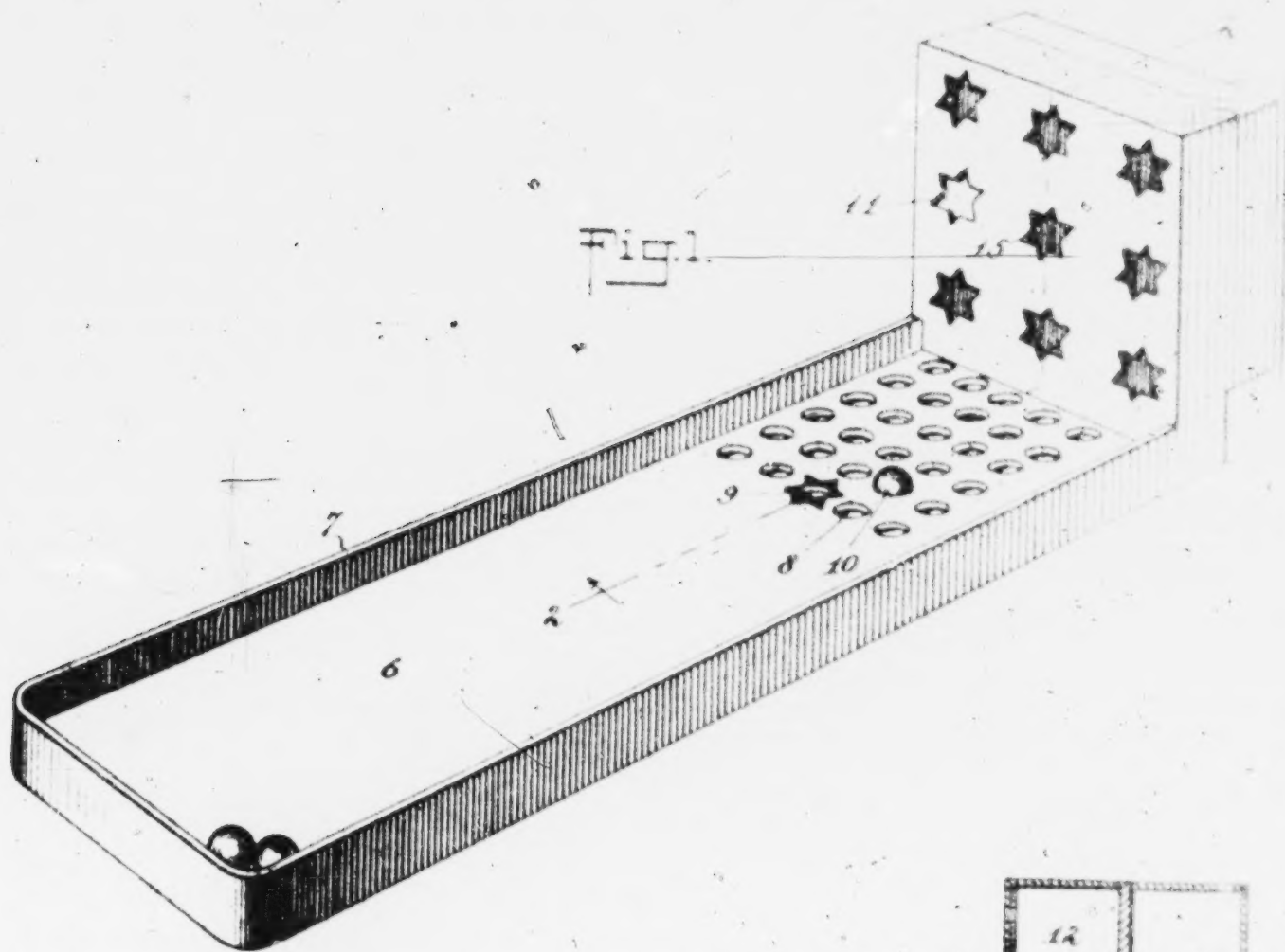


Fig. 1.

Fig. 3.

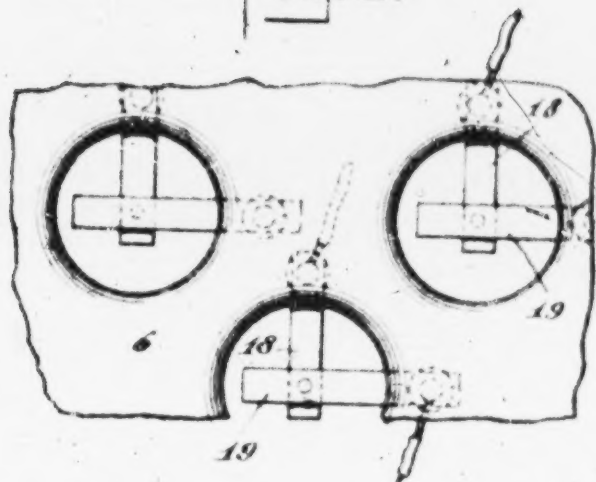
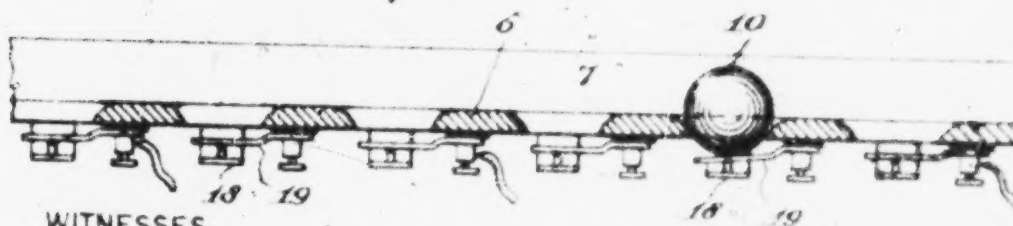
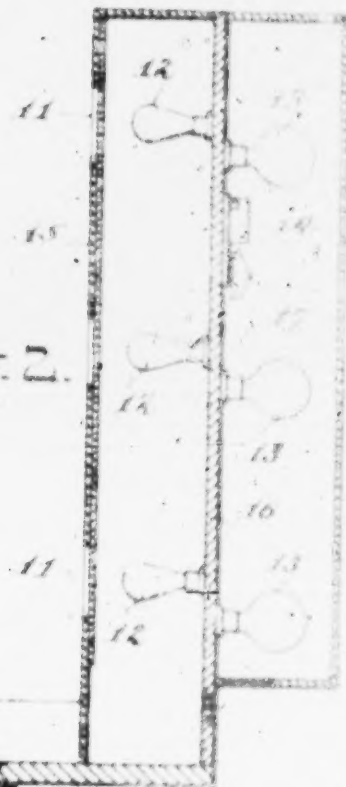


Fig. 2.



WITNESSES

William S. Goshel  
Glenn A. Horton

INVENTOR

Yozo Nakashima  
BY *Thomas Anderson & Co.*

ATTORNEYS

July 24, 1928.

1,678,573

Y. NAKASHIMA

AMUSEMENT DEVICE

Filed Sept. 24, 1927

2 Sheets-Sheet 2

Fig. 4

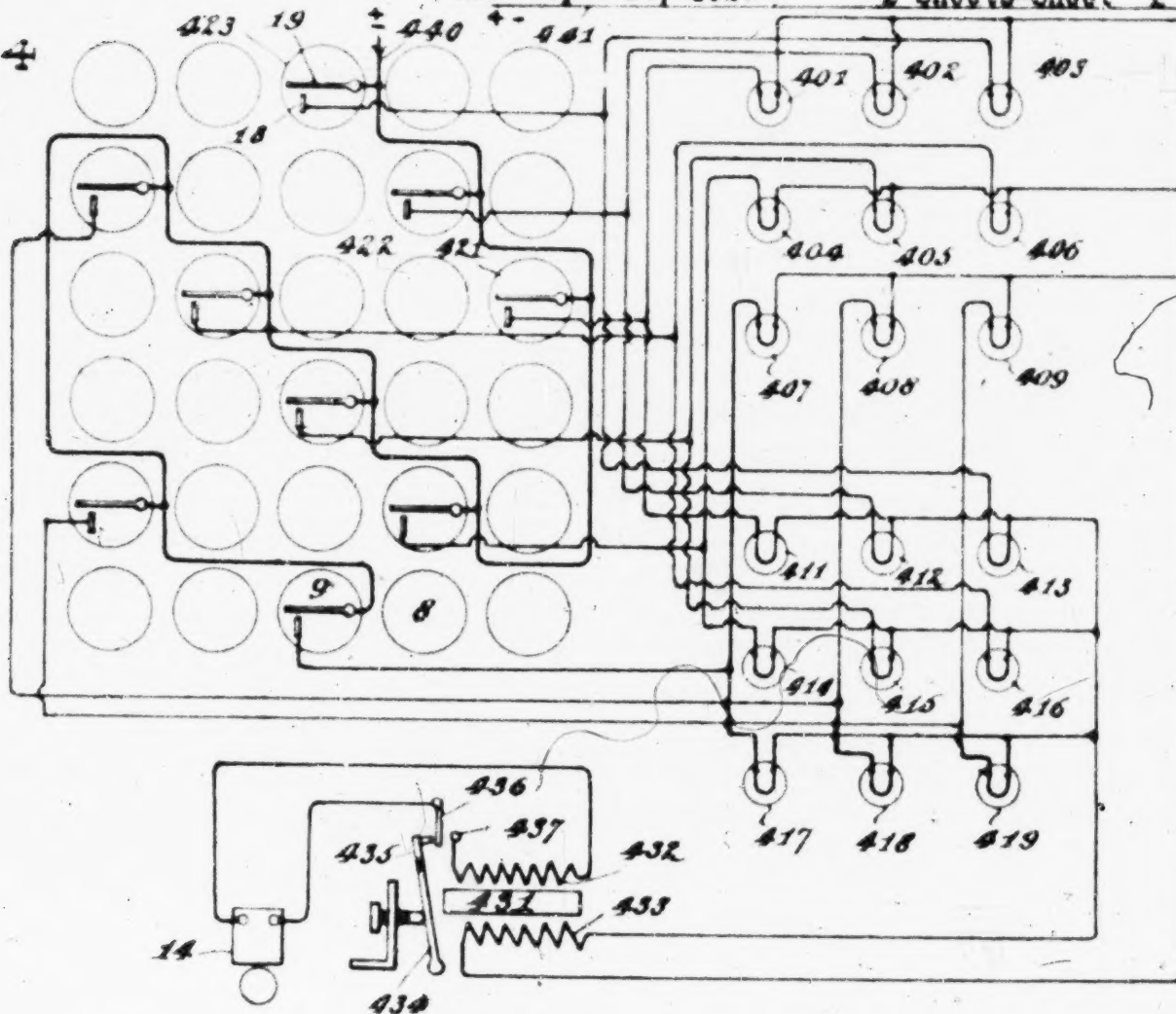
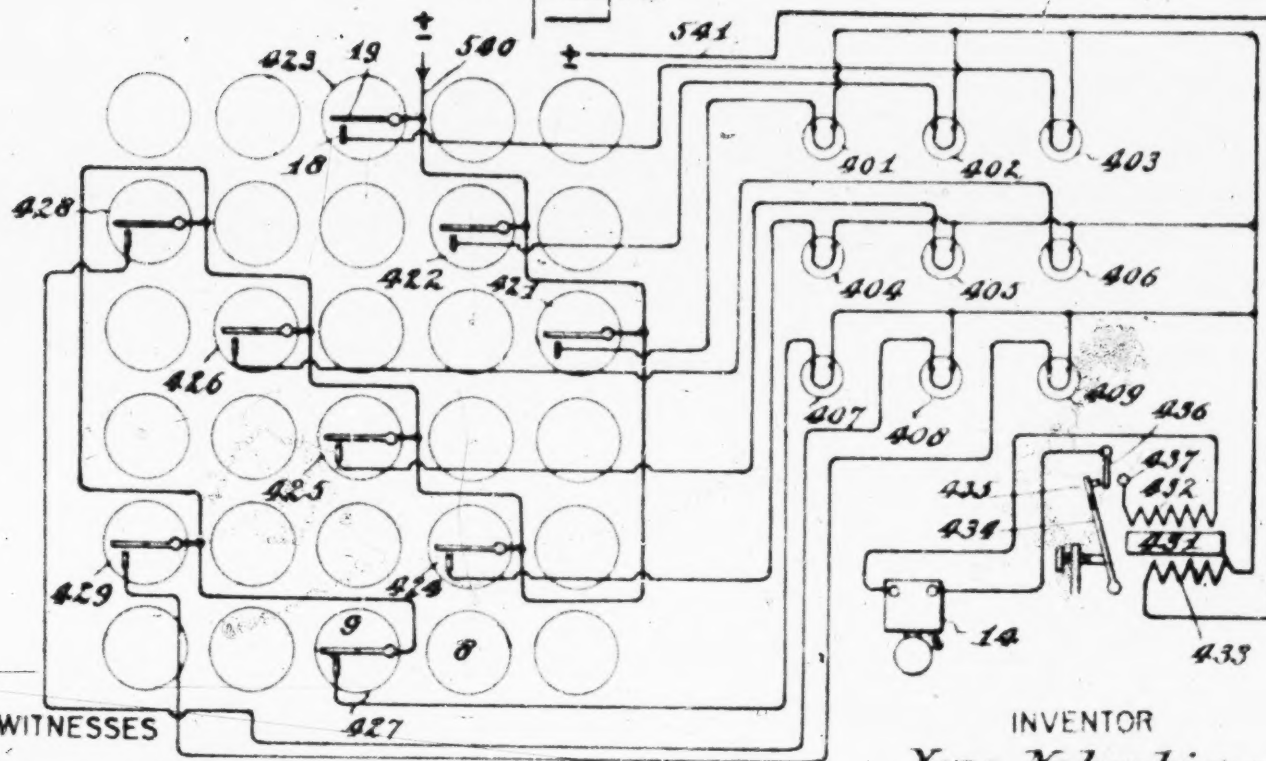


Fig. 5



WITNESSES

William P. Goebel.  
Charles A. Morton

INVENTOR

Yozo Nakashima

BY *William Anderson Mann*

ATTORNEYS

## UNITED STATES PATENT OFFICE.

YOZO NAKASHIMA, OF BROOKLYN, NEW YORK.

## AMUSEMENT DEVICE

Application filed September 24, 1927. Serial No. 221,828.

This invention relates to new and useful improvements in amusement devices.

One object of this invention is an improved amusement device adapted to signal the attendant and the player when the latter succeeds in making a winning play.

Another object is an improved amusement device adapted to differentiate between different winning plays which entitle the player to receive different prizes.

In accordance with this invention the amusement apparatus consists of a table or other device provided with a plurality of receptacles. The player seeks to roll the ball or other object of play into certain distinctively marked receptacles in the group, in an endeavor to make a prize-winning play. Those receptacles which constitute prize-winning plays, in addition to being visibly differentiated from the remaining receptacles are also furnished with signal contacts, each contact controlling, over a suitable electric circuit, a visible signal indicator which operates when the ball lodges in the receptacle with which the signal contact is associated, thus serving to indicate to both the player and the attendant that a prize-winning play has been made. The invention further contemplates that whenever the player succeeds in making a play or a series of plays entitling him to a grand prize a further and additional signal will operate, which will indicate to both the player and the attendant that the player is entitled to a grand prize.

In the drawings, comprising two sheets, Figs. 1 to 5 inclusive,

Fig. 1 is a view in perspective of the amusement device or playing table;

Fig. 2 is a sectional view along the line 2-2 of Fig. 1;

Fig. 3 is a detailed plan view of a portion of the playing table and the signal contacts associated with receptacles therein;

Fig. 4 is a schematic drawing of one form of circuit network used in the signal system; and

Figure 5 is a schematic drawing of an alternative form of circuit network which may be used in the signal system in place of the network of Fig. 4.

Like reference characters designate like parts throughout the several figures.

The device consists of a playing table 6 which is preferably provided with a wall 7 secured to the sides thereof. At one end of

the table a series of receptacles or pockets is provided, such as are indicated at 8 and 9 of Fig. 1. The player stands at the front end of the table, that is, at the end remote from the receptacles, and is provided with a plurality of playing objects, which in the present case consist of balls such as are indicated at 10 in Fig. 1. The balls are of such dimensions that each of them is adapted to rest in any receptacle without passing therethrough, as is best indicated by the ball 10 of Fig. 1.

A certain number of receptacles are selected as prize-winning receptacles and are differentiated from the remainder by suitable marking. The applicant usually designates the prize-winning receptacles by means of stars and terms them "star numbers". Each prize-winning receptacle or star number is provided with a pair of contacts 18 and 19, best indicated in Figs. 2 and 3. These contacts are so arranged that they are normally separated, but whenever the ball 10 rests in a prize-winning receptacle the weight of the ball 10 is sufficient to bring the spring 19 into physical contact with the contact member 18. Whenever the ball 10 is removed from the receptacle the natural resilience of the spring 19 causes it to break physical contact with the contact member 18.

As best indicated in Figs. 4 and 5, one group of contact springs (in the drawings, the contact members 19), are all strapped together by a suitable strap wire, and the other contact members (in the present instance the contact members 18), are connected by individual leads to a series of lamps, there being one lamp associated with and peculiar to each prize-winning receptacle. One side of each lamp is connected to a suitable strap wire leading to a source of electric current supply. Thus, whenever a pair of contact members 18 and 19 are closed by the weight of the ball 10 an electric circuit will be closed to illuminate one of the lamps and the associated star, thereby indicating to both the attendant and the player that the latter has succeeded in rolling the ball into a prize-winning receptacle.

The lamps 401 to 409 inclusive (Figs. 4 and 5), are arranged in a cabinet consisting of a partition 16 and screen 15 perforated as at 11 (Figs. 1 and 2), by star-shaped apertures through which the illuminated lamp is adapted to display a star-shaped symbol or emblem. The cabinet is best indi-



ated in Figs. 1 and 2. In addition to the signal lamps 401 to 409, which are indicated in Fig. 2 by the reference character 12, a second series of lamps 411 to 419 (Fig. 4), are also sometimes used. This latter group of lamps is indicated by the reference character 13 in Fig. 2. When the second group of lamps is used they may, if preferred, be mounted upon the opposite side of the partition 16, as indicated in Fig. 2, and a suitable cover member 17 may be placed thereover to form a second cabinet, which serves to protect the lamps from damage. Mounted either in or adjacent to either one of the cabinets is an audible signal 14 which may consist of a bell, buzzer, or any other preferred form of audible signalling means. A relay 431 (Figs. 4 and 5), is also mounted either in or adjacent to one of the cabinets. The relay 431 serves to control the operation of the audible signal 14 as hereinafter more fully described.

The general operation of the device is as follows:

The player is supplied with a plurality of objects which are ordinarily sponge rubber balls of the character of the ball 10 (Figs. 1 and 2). The player proceeds to roll the balls over the table, in an attempt to lodge them in prize winning receptacles or star numbers, as at 9 (Fig. 1). Whenever the player is successful in so doing the contact members 18 and 19 associated with said prize-winning receptacles are closed and one of the lamps 12 (Fig. 2) will be illuminated. Referring to Fig. 5, we will assume that the ball has lodged in the receptacle numbered 423, in which event lamp 403 will be illuminated over the following circuit: from a source of current supply, which may be either alternating current or direct current (which in the drawings is assumed to be alternating current), over the lead 540, contacts 19 and 18 of receptacle 423, filament of the lamp 403, winding 433 of the relay 431, lead 541, to the other side of the source of current supply. The lamp 403 is accordingly lighted. Although the current is now flowing through the winding 433 of the relay 431 the relay will not be operated, as it is given a marginal adjustment. This marginal adjustment is of such a character that the armature 434 of relay 431 will only be operated to close the contacts 435, 436 and 437 when the player has succeeded in lodging all of the played objects or balls 10 with which he is furnished, in prize-winning receptacles or star numbers. Ordinarily, the player is furnished with three balls; consequently, in order to operate the relay 431 it is necessary for him to lodge all three of the balls in prize-winning receptacles. If he succeeds in lodging only one or two of the balls in prize-winning receptacles the relay 431 will not operate, although two of the lamps (401

to 409 inclusive), will be eliminated. Whenever the player succeeds in lodging all three of the balls in prize-winning receptacles or star numbers three of the lamps of the group 401 to 409 inclusive will be illuminated and the relay 431 will attract its armature 434, thereby closing the contact members 435, 436 and 437, to close a local circuit, including the buzzer, and another winding 432 of relay 431, which is arranged in inductive relation with the winding 433 of the relay.

As heretofore set forth, and as indicated in the drawings, the applicant contemplates that ordinarily the source of current supply will be alternating current, in which event the current flowing in the winding 433 of the relay will, whenever the armature 434 is attracted and contacts 435, 436 and 437 are closed, induce a current of like characteristics in the secondary winding 432 of the relay, which current will furnish sufficient power to operate the audible signal 14.

It should be understood however, that if direct current is employed in place of alternating current the winding 432 may be disconnected and a circuit to operate the audible signal 14 may be provided which will include one side of the source of current supply, the winding of the audible signal 14, contact 436, thence, by way of contact 437 to the other side of the source of current supply.

Under some conditions it may be deemed desirable to increase the marginal range of the relay 431. When this is desirable a second group of lamps (411 to 419, see Fig. 4), may be employed. These lamps are connected with lamps 401 to 409 inclusive, respectively, lamp 411 being in multiple with lamp 401; lamp 412 being in multiple with lamp 402, etc. With this arrangement, whenever one of the lamps 401 to 409 is illuminated, one of the lamps 411 to 419 also receives a substantial current flow, which may or may not illuminate said lamp. As these lamps, however, which are best indicated at 13 in Figure 2, are merely resistance lamps, it is not material that they should be fully illuminated, or that they should be illuminated at all. It is obvious, however, that by placing resistance lamps (of the character of the lamps 13, Fig. 2) in multiple with the lamps 401 to 409 inclusive, the variation in resistance in the lamp network is considerably increased, resulting in an increase in variation in the current flowing in the network when the lamps 13 are employed, so that the operating margins of the relay 431 will be more widely separated, that is, it will require considerably more current to operate it when two or more sets of lamps (12 and 13—Figs. 2 and 4) are employed, than when only one set of lamps is employed.

The armature 434 of relay 431 is quite



massive and is provided with a suitable adjusting screw by means whereof the position of the armature 434 with respect to the core of the relay 431 may be varied at will.

What is claimed is:—

1. In an amusement apparatus a playing table, recesses in the table comprising a target for a played ball, certain of the recesses visibly distinguishable from the remainder being designated as prize-winning recesses, each prize-winning recess being provided with a contact which is adapted to be closed when a ball is positioned in the recess, a plurality of signals operable to display a visible positive signal, there being as many signals as there are prize-winning recesses, a plurality of circuits, each circuit comprising one contact and one visible signal, a relay operable when a plurality of visible signals are positively displayed but non-operable when a single visible signal is positively displayed, a circuit common to the relay and all of the visible-signals, and an audible signal operable under control of the relay.
2. In an amusement apparatus and in

combination, a playing table, recesses therein comprising a target for a played ball, certain of said recesses visibly distinguishable from the remainder being designated as prize winning recesses, each prize winning recess being provided with a circuit closing contact, a series of lamps, there being one lamp peculiar to each prize winning recess, a plurality of circuits, each circuit comprising one lamp and one circuit closer, each circuit closer being operable responsive to the positioning of a ball in its associated recess to close the circuit to light its associated lamp as a positive signal, a marginal device common to all of said circuits, said device being non-operable when a single lamp is lighted but operable when a predetermined number of lamps are lighted, an electro-responsive audible signal, and a circuit therefor closed by the operation of said marginal device.

Signed at New York city, in the county of New York and State of New York, this 19th day of September, A. D. 1927.

YOZO NAKASHIMA.

Jan. 18, 1927.

A. T. HAYASHI

1,614,471

JAPANESE PEANUT FING PONG GAME

Filed August 18, 1926

2 Sheets-Sheet 1

Fig. 1.

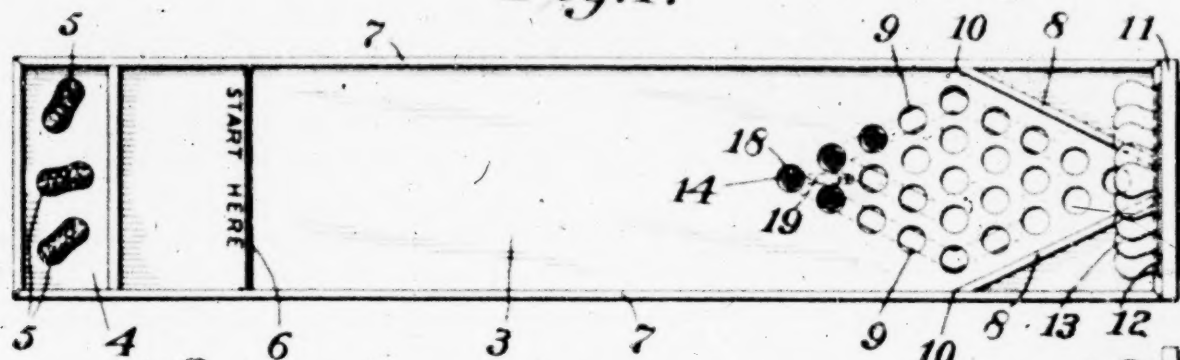


Fig. 2.

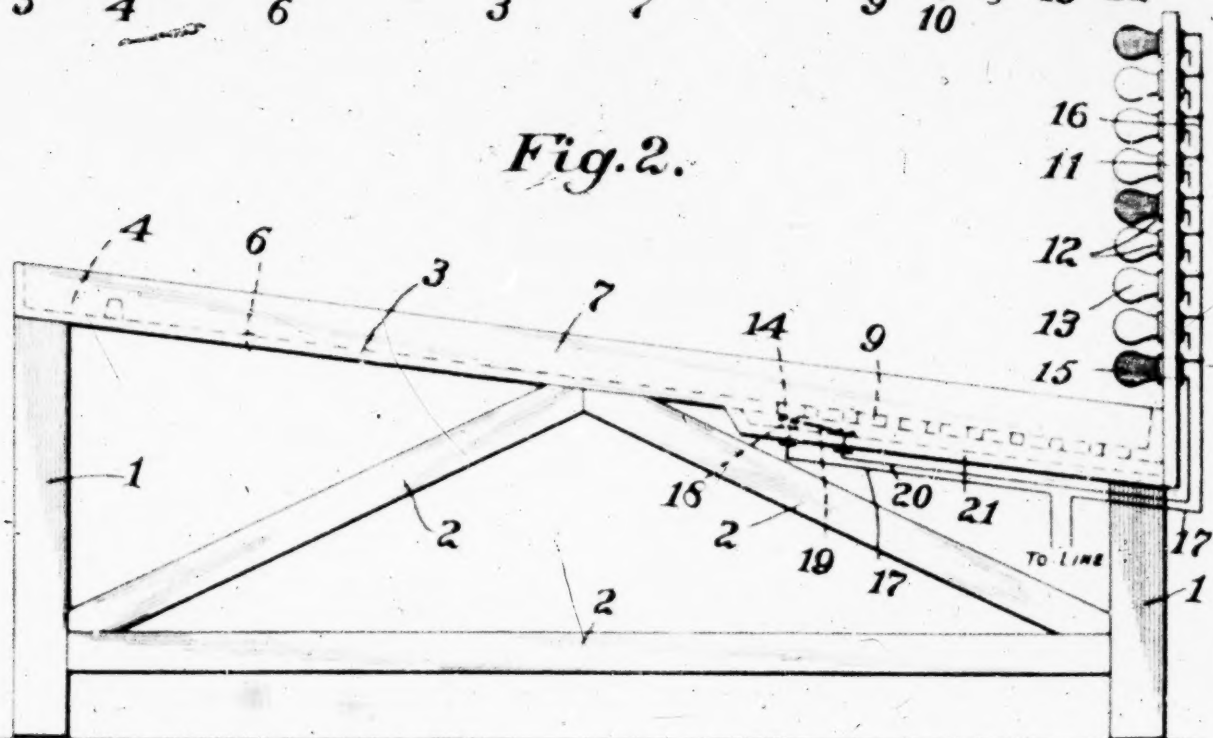


Fig. 3.

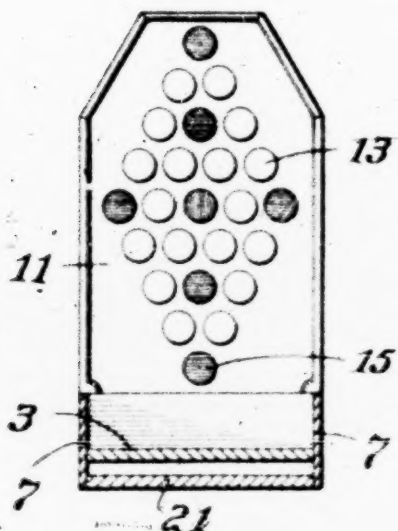


Fig. 9.

CHART		
●	○	○
Counts	10,000	
○	○	○
"	5,000	
○	○	○
"	2,000	
○	○	○
"	1,000	
○	○	○
"	500	
○	○	○
"	100	

Inventor:

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1,614,471

JAPANESE PEANUT PING PONG GAME

Filed August 18, 1926 2 Sheets-Sheet 1

Fig. 4.

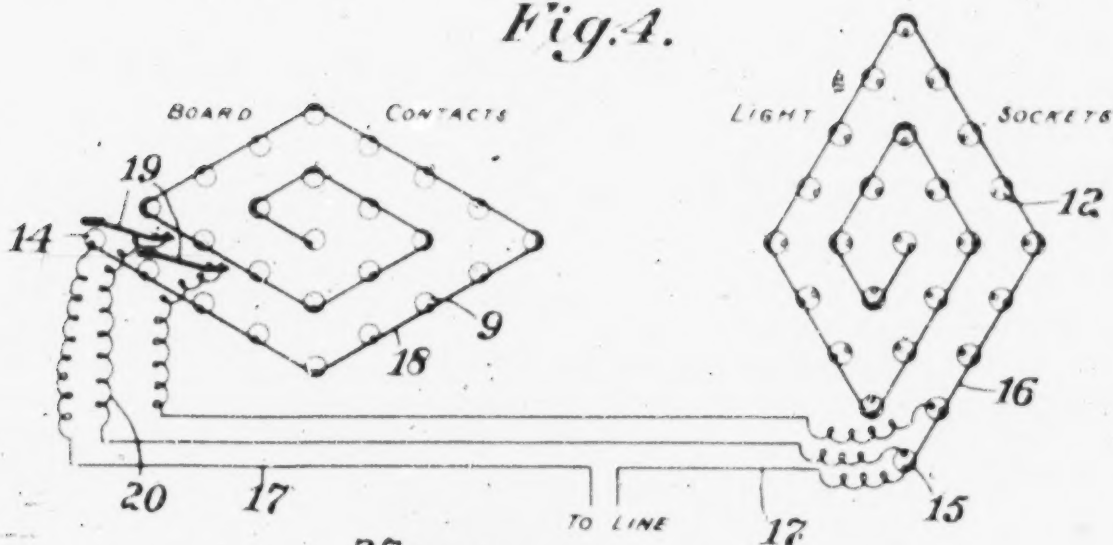


Fig. 5.

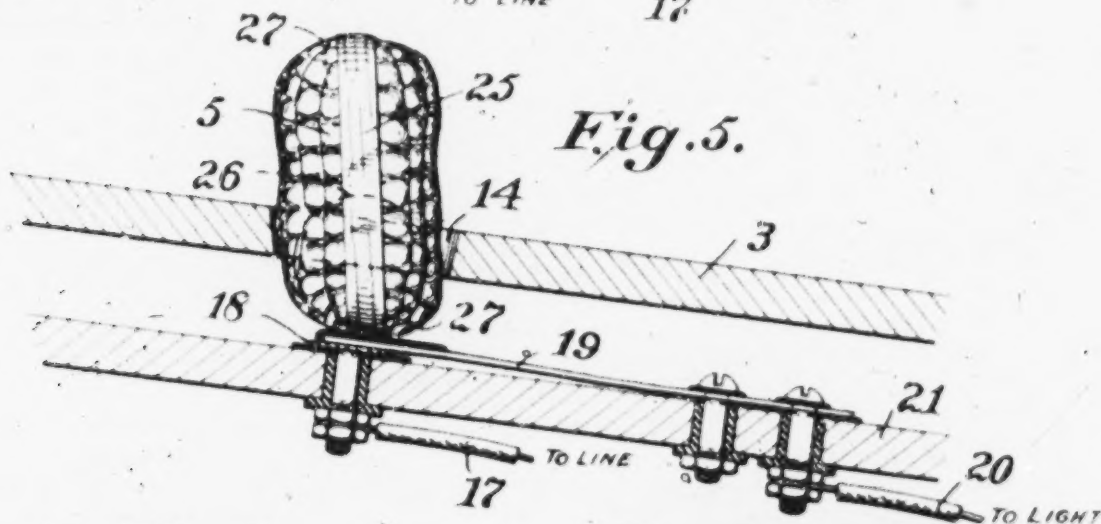


Fig. 6.

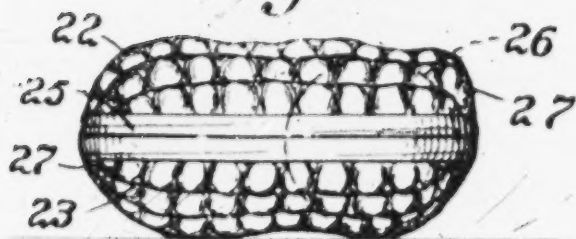


Fig. 8.

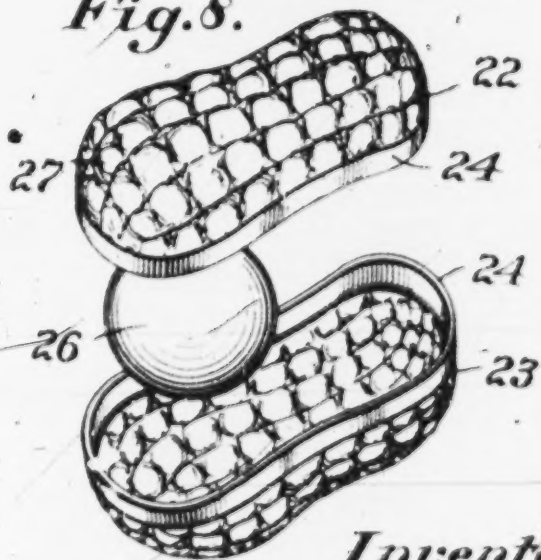
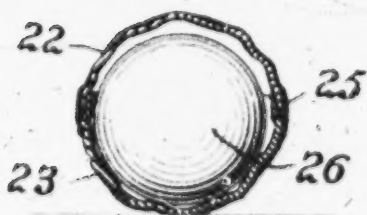


Fig. 7.



Inventor:

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## UNITED STATES PATENT OFFICE.

ANDREW T. HAYASHI, OF VENTNOR, NEW JERSEY.

## JAPANESE PEANUT PING-PONG GAME.

Application filed August 18, 1926. Serial No. 129,907.

My invention relates to new and useful improvements in games and more particularly to a game of the "Japanese ping pong" type.

5 The ordinary game of "Japanese ping pong" consists of a table that may or may not be inclined and is provided at its far end, or lower end, with a plurality of holes in series behind one another and the object  
10 of the game is to roll a ball down the table and have it drop in some of the rearmost holes which, of course, are protected by the ones in front of them, and after the ball has been rolled a number of times, designating  
15 numbers for the holes in which the ball has settled, are added and a prize or favor given to the player, commensurate with the total score thus obtained.

One of the objects of the present invention is to provide a board or table set at an  
20 incline and also provided with a plurality of holes near its lower end, the holes being in a diamond formation, that is, one hole, then two, then three, up to five and then in the  
25 inverse order. Two guideways extending from the line of greatest number of holes to the far end are provided, and under the holes there are placed a plurality of electrical spring contacts. There is also provided  
30 a foot board extending vertically from the rear end which is provided with a number of lights in the same formation as the holes at the rear end of the board, and these lights or lamps are individually operated by  
35 an object settling in a hole in the board thus designating in which hole the object has dropped.

Still another object of the invention is to provide the board or game as above mentioned, and to further provide an object to  
40 drop in the holes that will not travel in any straight line or predetermined path, such as when a spherical object or ball is rolled down an incline.

45 Still another object of the invention is to provide the traveling object in the form of a huge peanut in which is encased a heavy weight which may be spherical in shape. As the casing for this weight is in the shape of  
50 a huge peanut and the ends are irregular, when the peanut is liberated at the upper end of the board it will turn over end for end, but instead of rolling in a direct path, it will zig zag not only down the board,

but also partly across the same and never  
55 take the same course twice in succession.

Still another object of the invention is to provide a table with a series of holes therein and also a series of lamps at its end, which are electrically operated by the peanut  
60 dropping in any of the respective holes. Some of the holes will be designated by a red light while others have a blue light to designate them, which colored lights will have different values or counts when adding  
65 up the total score.

Still another object of the invention is to provide a game wherein instead of using an ordinary ball, an irregular shaped object is used, preferably in the shape of a huge  
70 peanut and having irregular ends in which there is a weight which is free to move longitudinally of the peanut and slightly laterally so that skill does not enter into the game, but mere luck or chance is the con-  
75 trolling feature.

With these and other objects in view, the invention consists in certain new and novel arrangements and combination of parts as will be hereinafter more fully described and  
80 pointed out in the claims.

Referring now more particularly to the drawings showing a preferred embodiment of my invention.

Fig. 1 is a top plan view of the board or  
85 table showing arrangement of the formation of holes and lamps.

Fig. 2 is a side elevation of the same.

Fig. 3 is a view in elevation of the foot board and the lower part of the table being  
90 shown in section.

Fig. 4 is a diagrammatic view showing the wiring arrangement for the holes and the lights.

Fig. 5 is a fragmentary section view showing the peanut within one of the holes and operating a contact member to light a light.

Fig. 6 is a side elevation showing the weight in dotted lines enclosed within the shell of the peanut.  
100

Fig. 7 is a cross sectional view thereof showing the weight within the shell.

Fig. 8 is a view showing how the object resembling a peanut is assembled, and

Fig. 9 shows a chart of how the points  
105 may be counted for the different lights by the rolling object.

Referring now more specifically to Figs.

1 and 2 there is shown a table comprising the legs 1 and braces 2 and the top 3 and it is to be noted that the legs at the forward end of the table are longer than the rear legs so that the top will be inclined toward its rear or far end. At the rear end of the top 3 there is shown a compartment 4 for holding the movable objects which will be hereinafter designated as peanuts 5. A short distance below this compartment there is a line 6 and printed on the table by this line are the words "Start here". The edges of the top are limited by the side pieces 7, while near the rear end are the two guides 8, which are placed substantially in V formation so that when the peanut 5 is liberated at the top of the table, if it should pass the holes or openings 9 (shortly to be described), as far as the point 10, it will strike against the guide board 8 and drop into some one of the rearmost holes.

At the rear end of the table I provide a foot board 11, that is provided with a plurality of lamp sockets 12 in which may be placed the lamp bulbs 13, and as may be seen in this Fig. 3 different colored bulbs may be interspersed between the ordinary white bulbs.

Referring for the moment to the holes 9 in the board, it will be seen that they run in series from one hole to five holes and then again in series to one hole, the outline of the holes being that of a diamond. In the same manner the sockets 12 are arranged on the foot board 11, but in this instance, of course, the board is a vertical one and the diamond formation is in a vertical plane rather than nearly in a horizontal one.

Referring now for the moment to Fig. 4, I have shown in a diagrammatic way the manner of synchronizing the holes with the lamps, that is, so that when the peanut 5 drops, say into the first hole 14 of the series of holes 9, it will light the lowermost lamp 15 of the series of lamps 13.

The sockets 12, Fig. 4, it will be noticed, are connected by a common lead 16, that is, the lead is connected to one side of every one of the sockets and the line wire 17 is connected to one end of this lead and is also connected to a socket or switch on the local current supply.

In the same manner there is a metal strip 18 that extends beneath all of the holes and forms a common lead as may be seen in Fig. 4, while directly over this common lead there will be in each instance, a movable contact 19 which is in the form of a spring finger of brass which forms a good conductor so that when the peanut falls into the hole 14 the finger 19 will contact with the common lead or strip 18. The inner end of the finger 19 has the wire or lead 20 extending therefrom and over to the other side of the lamp 15, therefore, a dropping

of the peanut in, say the hole 14 closes the circuit as will be readily understood and the lamp 15 on the base board will light up. In the same manner all the lamps and lights are connected and operated.

In Fig. 5 I have shown the light wires and line wire as placed beneath a small sub-structure 21 of the top 3 and it will be understood that these wires might be under the sub-structure or above the sub-structure, this form of fastening means for the wires being shown to illustrate a form of circuits only, the object, of course, being to have a common lead for the lights and a separate spring finger electrically connected and placed beneath each of the individual holes so that when the peanut drops in any of the holes it will engage a spring finger contact, and light the light on the board that corresponds in position to the hole in the table.

Referring now to one of the most important parts of the invention and to Figs. 5 to 8 inclusive, there is shown the peanut which comprises a shell divided longitudinally thus forming the upper half 22 and the lower half 23. Both halves are provided with a smooth edge 24 and one half of the shell about its edge is a little smaller in external diameter than the other so that one edge may fit within the other as clearly shown in Fig. 7. After the two halves are slightly telescoped or wedged together, a heavy piece of gummed paper 25 is banded about the edges to tightly hold the two parts in position.

Before these shells are assembled, however, a heavy steel ball 26 is placed within the shell, the ball being slightly less in diameter than the cross section of the peanut so that it is free to move from end to end of the shell and slightly laterally of the same.

The outer ends 27 of the peanut are purposely irregular in shape and outline so that when the peanut is liberated at the starting line 6 it will by no means just turn over end for end and travel in a straight line, but on the other hand, due to its irregular shape, and the loosely contained ball, the peanut will turn end for end and wobble down the board, first in one direction and then in the other and finally drop into one of the holes.

The outer contour of the peanut shell is full of depressions and lumps to simulate as closely in appearance the ordinary peanut shell, but, of course, on a large scale as the actual length of the peanut is nearly four inches.

The shells are made and formed of a very heavy compressed paper which I have so far only been able to secure in Australia, although shells made of any stiff fibre or paper that will retain the shape and will stand



the rough and continuous usage to which they are put would serve the purpose.

As shown in Fig. 9 there is a chart showing that if three peanuts are liberated at the upper end of the board and drop in to certain of the holes, which are designated by the blue light lighting and the red light and the further blue light lighting, the count would be 10,000 points, and the highest prize given would go to the player of the game. On the other hand, should the three white lights be lit after the peanuts have been liberated and settled in certain of the holes only 100 points would be counted for the player of the game.

Of course, the lamps will stay lighted as long as the peanuts are in the holes and weigh down the spring fingers or contacts, but as soon as the peanuts are removed the circuits will be broken and the lights, of course, go out.

I am aware that it is old to provide a series of holes in a board and to have lights light up when an object comes to rest in one of the holes, and I am also aware that it is old to have small capsules with a weight therein in a game and to tilt the board to try and make the capsule turn from end to end and make it go into another compartment as shown in the patent to Worden No. 617,549 of 1899, but it will be appreciated in the present instance that the table or board is stationary and that there is a natural incline to it and the moving object can be in no way directed or controlled after it is once liberated or started down the table.

Furthermore, the object in this instance is of irregular shape, especially at its ends, and when liberated will not travel in a straight line from one end of the table to the holes such as in the ordinary "ping pong" game, but on the other hand it will turn over end for end in its travels, will wobble first in one direction and then in another, far different from an ordinary spherical object that is rolled along a table either horizontal or at an inclined plane.

The game in actual use has proved a very popular one due to the fact that the structure and appearance of the movable object is novel and the lighting of the lights has a fascinating appeal.

Furthermore, one who has never played the game has just as much chance to win a big prize as one who has practiced or played the game many times.

Should, of course, the peanut not come to rest in any of the holes, the player is allowed to liberate another one.

Finally the peanut will appear to come to rest in a certain hole only to tilt once more, due to the momentum and moving of the ball in the peanut, and come to rest at its opposite end in another one of the holes.

Many slight changes might be made with-

out in any way departing from the spirit and scope of the invention.

Having thus described the same what I claim as new and desire to secure by Letters Patent is:—

1. A game comprising a board slanting toward its rear end and the board provided with a plurality of openings near its rear end, a plurality of lights arranged and reproduced in relatively same formation as the holes in the board and substantially at right angles to the openings in the board, a plurality of electrical contacts respectively situated beneath the said holes and electrically connected with said lights, and an irregular shaped object to be liberated at the head of the board, drop in one of said holes and operate one of said electrical contacts to thereby light a corresponding light and reproduce the relative position of the irregular shaped object.

2. A game comprising a board slanting towards its rear end and provided with series of openings therein, a series of lights reproduced in arrangement and position to the holes in said board, electrical spring contacts beneath each of the said holes and electrically connected respectively with said lights, an irregular shaped object having a weight therein, adapted to be liberated at the head of the board and to descend by gravity down the board end over end and in a tortuous path to drop into one of said holes to thereby operate a spring contact and light a correspondingly positioned light to portray the position of the irregular shaped object.

3. A game comprising a board slanting toward its rear end and provided with a series of holes in definite relation to each other, a plurality of lights reproduced in the same definite relation as the holes in the board and spring contacts located beneath each of the holes and electrically connected with the respective light, some of the lights being white and other of the lights being of distinguishing colors, a weighted object with irregular shaped ends adapted to be liberated at the head of the board and descend in a zig zag path down the board and drop into one of said holes, to thereby operate one of the spring contacts and light a correspondingly positioned light to diagrammatically show in which hole the object has dropped.

4. An amusement game comprising a board positioned at an incline and provided with a plurality of holes in arithmetical progression at its far end, a board having a plurality of electric light sockets secured thereon and arranged in the same arithmetical progression, spring contacts beneath each of the said holes and electrically connected with said sockets so that an operation of one contact will close the circuit to a correspondingly positioned socket, different col-

ored electric bulbs within said sockets, a shell provided with a weight therein and the weight heavy enough to depress the spring contact when it drops into one of said holes to thereby light a designating and corresponding light on the board and diagrammatically portray the position of the shell.

5. A game of the "Japanese ping pong" type comprising a board positioned at an incline and provided with a series of openings therein, a foot board extending upwardly on the board and having a plurality of sockets corresponding in arrangement to the arrangement of the holes in the board, electrical spring contacts beneath the said holes, electrical circuits extending respectively from the said contacts to said sockets, a movable object in the form of a huge peanut having a shiftable weight therein and said peanut adapted to pursue a tortuous path down the board, drop into one of said openings and thereby cause a respectively positioned light to function on the base board to simulate the actual respective position of the peanut in the socket.

6. In a game of the "Japanese ping pong" type a releasable object comprising two elongated parts of a shell simulating in appearance a peanut of huge dimensions, a ball within the shell and the shell parts secured to each other throughout their length.

7. A movable object for a game comprising two semi-shells formed of material relatively light in weight, a weight positioned within the shell and the semi-shells fastened together throughout their longer dimension to thereby form a substantial unitary structure, and said object when liberated on the inclined plane descending in a tortuous path end over end.

8. A device adapted to travel in a tortuous path down an inclined plane comprising a shell formed of two halves and the two halves divided along their greatest dimension, a weight movable longitudinally and laterally of the shell, and the parts of the shell secured to each other to form a substantial unitary structure.

In testimony whereof I affix my signature.  
ANDREW T. HAYASHI

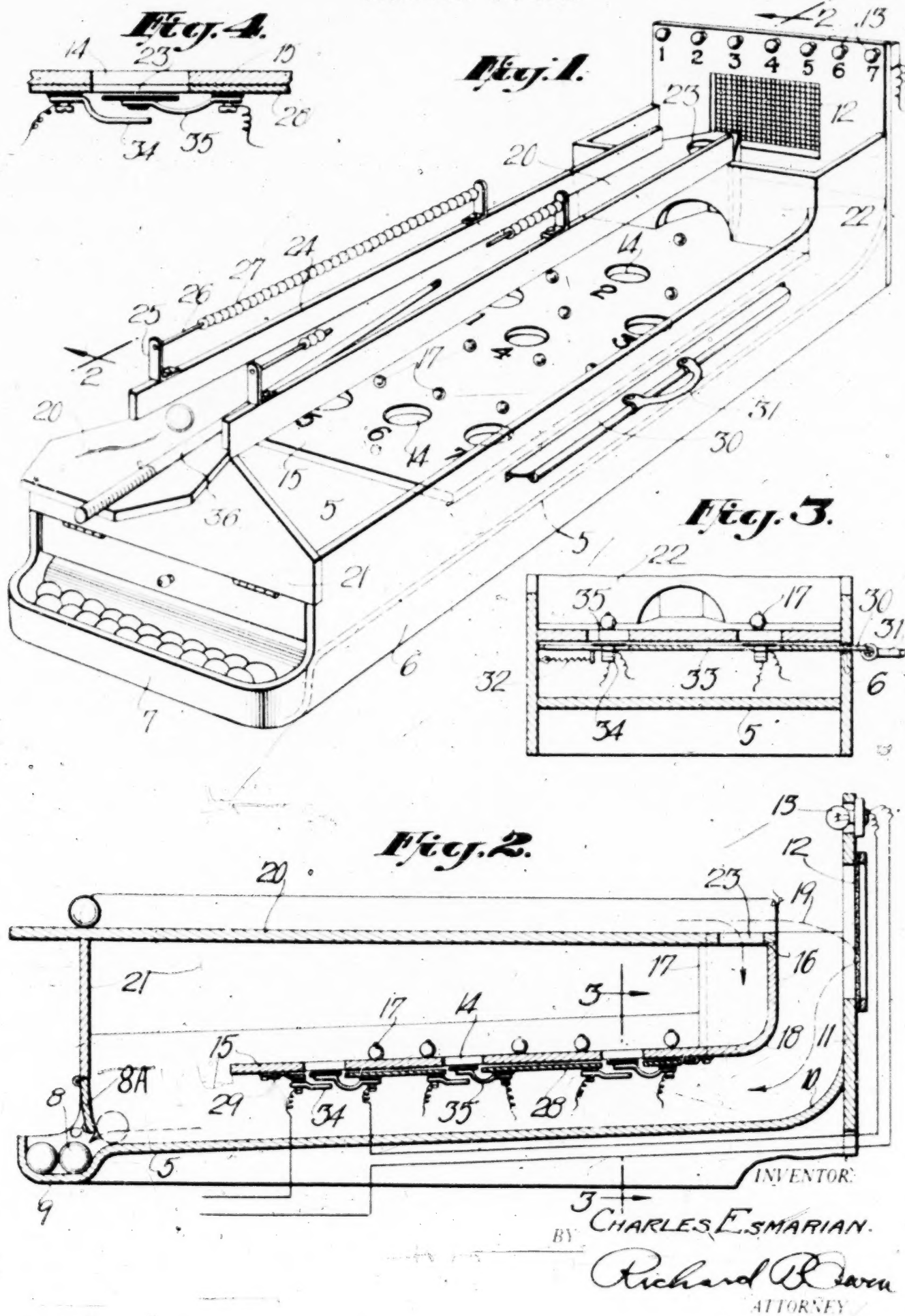
Jan. 4, 1927.

1,612,912

C. ESMARIAN

SCORE INDICATING BALL RETURN GAME

Filed Jan. 30, 1926





## UNITED STATES PATENT OFFICE.

CHARLES ESMARIAN, OF CLIFTON, NEW JERSEY.

## SCORE-INDICATING BALL-RETURN GAME.

Application filed January 30, 1926. Serial No. 84,979.

This invention relates to a game board, and in particular to one adapted to be played by projecting a plurality of balls so that they will roll over a tally board to register a score.

The particular object of the invention is to provide a game board which is operable from one end and upon which a game score can be accumulated during play, the board being so arranged that the non-scoring balls can be used over again or can be brought to a position adjacent the players' end of the board.

A further object of the invention is to provide a game board which can be used at a counter as in summer resorts which is so arranged that skill must be exercised in projecting the balls to a certain point before there is any liability of the same scoring, the game being so arranged that one or more persons may play the same in competition.

A further object of the invention is to provide a game having associated therewith counters upon which the score may be kept track of, and if desirable the game may have embodied therein a series of electric lights which will be selectively lighted depending upon which ball does the scoring.

A further object of the invention is to so arrange the game board that skill must be exercised in projecting the balls to a certain ball-drop formed in the game board whereby the ball will be projected along a tally board to drop into an opening therein and accumulate a score, means being provided in the game board whereby when the balls over-shoot the drop which leads to the tally board they will be automatically returned to a suitable ball pocket for further use.

To enable others skilled in the art to fully comprehend the underlying features of my invention, that they may embody the same in the various modifications in structure and relation contemplated, a drawing depicting a preferred form has been annexed as a part of this disclosure and in such drawing similar reference characters denote corresponding parts throughout all of the views of which.

Figure 1 is a view in perspective of the game board constructed in accordance with my invention, and showing the runway along which a ball is adapted to be projected to a suitable drop which opens on to a

score board, there being also shown the receptacle for over-shot balls whereby the same are returned to a suitable ball pocket to be used over again.

Figure 2 is a section taken on the line 2-2 of Figure 1 and shows the longitudinal sectional arrangement of the game board.

Figure 3 is a section taken on the line 3-3 of Figure 2, showing the board in cross section and the arrangement of the ball returning slide associated therewith, and,

Figure 4 is an enlarged sectional detail of a portion of the tally board and ball retaining slides to show the arrangement of the electric contact associated with said slide for lighting the lights selectively to indicate the score.

Referring to the drawing in detail 5 indicates the bottom of the game board construction which is held in spaced relation with the ground and in obliquely disposed position between the side pieces 6 which side pieces at their front end are reduced in height and are bent around to form the front wall or end of the game device, the front end being indicated as at 7 and confining the game balls 8 in a depressed portion 9 in the front of the bottom member 5 which constitutes a return runway for balls that have been over shot and do not score.

The rear end of the bottom 5 is curved upwardly as at 10 and abuts against the rear wall 11 of the game board, said rear wall 11 being provided with a screen 12 which is adopted to prevent rebound of over shot balls which have been projected down the alley or runway to be hereinafter referred to. The upper edge of the back-board 11 is provided with a plurality of electric light bulbs 13 under which on the back-board are painted the score numerals as shown. Each of these bulbs 13 are connected in circuit with one of the openings in a tally board which is supported in spaced relation to the bottom 5 of the game board. This tally board is provided with a plurality of staggered openings 14 and the board itself 15 is formed at its rear end with the wall 16 which bounds a drop or chute construction 17 through which balls projected along the runway drop to roll out upon the tally board and into the openings 14.

The tally board adjacent each of the openings 14 is provided with obstructions which may be in any form but as shown are in the nature of bead members 17 which are

secured in any suitable manner to the tally board and in position to interfere with the clear passage of the ball as it rolls towards the front edge of the tally board. These obstructions are arranged so that they tend to keep the balls from rolling directly into the holes thereby making it more difficult for the player to score. The tally board 15 may be sloped slightly toward the front of the game board or it may be levelled so that the rear curved portion 15 thereof will give impetus to balls striking the same so that they will roll over the tally board and into the openings 14.

It is readily seen that should the ball pass over the tally board without entering any of the openings 14 it will drop off of the front of the board and strike the bottom 5 and roll against the spring closed door 8<sup>a</sup> which opens into the receptacle 9 at the front of the game board, or the dotted line 19 indicates the path taken by a ball which is over shot from the ball runway or alley 20 which is disposed longitudinally of and at the center of the game board and is supported at its front and rear ends on the front apron piece 21 and rear supporting wall 22. This supporting wall 22 forms together with the extended portions of the sides 6 a box-like rear end which forms the well hereinbefore referred to into which the balls take the course as indicated by the dotted line 19, when they over-shoot the opening 23 provided at the rear end of the runway 20. Balls are kept in the runway by suitable side pieces 24 to which are attached the brackets 5 which support therebetween a suitable wire member 26 upon which are slidably mounted the counting beads 27 upon which the tally may be kept.

In order to maintain the ball in the opening 14 until after a complete set has been discharged, as one chance of the operator playing the same, I provide a slide member 28 in the tally board 15 which is slidable in the members 29 disposed at the side edges of said slide 28 and secured in any suitable manner to the under side of the tally board 15. This slide member at one side of the game device projects through the side wall 6 as at 30 and is provided with a handle 31 so that the same can be drawn upon against the action of the coiled spring 32 which connects the slide 28 and one of the side walls 6, the drawing upon the handle 31 causing movement of the slide in a direction which will remove the contact associated with the slide 28 and allow the balls to drop through the opening 33 in the slide. These openings being normally positioned out of alignment with the opening 14 in the tally board, but being brought into alignment therewith when the slide is drawn out, whereby the ball resting in the opening 14 of the tally board will fall through the

slide and striking the bottom 5 of the game board will roll down said bottom when door 8<sup>a</sup> is opened and into the receptacle 9 from which they may be collected again for replay. In order to light the score lights 70 which are disposed on the back board 11 of the game device I suitably insulate from the slide 28 but secure thereto the contact finger 34 which is positioned below the extended yieldable arm 35 which is likewise connected to the slide and whose yieldable end is positioned in the opening 14 whereby when a ball comes to rest in said opening it will depress the arm 35 until the same makes contact with the finger 34 to close the electrical circuit to cause the score light corresponding to the number on the opening into which the ball has dropped to light. A set of these contact fingers are positioned beneath each of the openings 14 and are carried by the slide, and it is apparent that when a ball comes to rest at number two opening, number two light will light up and will remain lighted until the slide 30 has been drawn outwardly to allow the ball to drop there-through to the bottom 5.

It is evident, therefore, that by projecting a number of balls down the runway through the use of the cue 36, and by using skill the ball which is dropped through the opening 23 at the rear end of the runway will arrive at the tally board and score a number of points for the player. If desirable, the balls can be numbered, and the score can be carried on by adding the number on the balls and the number designating the value of the opening 14 in the tally board into which the ball dropped. Many variations of the score may be had in this manner, and it is to be distinctly understood that I am not limited to the use of any particular number of balls, and while I have shown an arrangement embodying seven openings in the tally board, I do not wish to be limited to any specific number of openings, as any number might just as well be used to carry out the feature of the game.

It is also to be understood that ball pocket 9 formed at the front of the game device can be embodied in the game device at the side thereof so that when the device is used on counters at summer resorts the attendant behind the counter will have access only to the balls and provide the player with them according to the amount that he pays for.

While I have shown an electrical scoring device in connection with the game board, it is to be understood that this may be dispensed with if desired and accounts taken by the player or an attendant as the score is tallied.

While I have illustrated and described my invention with some degree of particularity, I realize that in practice various alterations therein may be made. I, therefore, reserve



the right and privilege of changing the form of details of construction, or otherwise altering the arrangement of the correlated parts without departing from the spirit of the invention or the scope of the appended claims.

Having thus described my invention what I claim as new and desire to secure by United States Letters Patent is:

1. A game device comprising an upper raceway, an intermediate, horizontally disposed tally board having openings therein onto which balls are adapted to be rolled, a rebound preventing screen, adjacent the end of said raceway, interference members adjacent said openings, score designations at the openings, a backboard having corresponding score designations, illuminating members adjacent each of said designations, and means in the board openings for operating the illuminating member at the designation corresponding to that of said opening.

2. A game device comprising a plurality of superposed ball receiving members, a ball runway along which a ball is projected having an opening at one end thereof, a backboard spaced from the end of said runway, a screen in said backboard, one of the ball receiving members constituting a horizontally disposed score board being approached through said opening and the other member constituting a horizontally disposed ball return being approached through the space between the end of the runway and the backboard and a slide member associated with said score board for dropping the balls to said ball return member and a pocket at the end of said ball return member.

3. A game device comprising a runway having an opening therein and along which a ball is projected, side walls on the runway

for guiding a ball, counters arranged in position on the runway whereby scores may be recorded, a backboard, a rebound preventing screen in said backboard against which balls are projected off the runway, said backboard being spaced from the end of said runway to constitute a well into which non-scoring balls drop, a horizontal board beneath said runway, access to which is had through the opening in the runway, a bottom in the game device constituting a ball return, access to which is had through said well, a slide associated with said tally board, means in the tally board and in the slide for allowing balls to fall therethrough to the bottom and a receptacle in said bottom for the accumulation of balls that have been used in play, and an electrically operated tally means in said slide.

4. A game device comprising a ball runway having an opening in one end thereof, a well adjacent one end of the runway for the reception of overshot balls, a tally board having openings therein approached through said opening, a ball returning board approached through said well, a ball receptacle, a door for preventing the balls from rolling into said receptacle, a slide having openings therein arranged under the tallyboard, electrical contacts constituting ball supporting members arranged in part of the openings in said slide and adapted to be normally positioned beneath the openings in the tallyboard to register the score, and the unoccupied part of the slide openings being arranged to allow passage therethrough of balls after the score has been tallied.

In testimony whereof I affix my signature.

CHARLES ESMARIAN. [L. S.]

March 29, 1927.

1,622,330

D. C. MADER

GAME APPARATUS

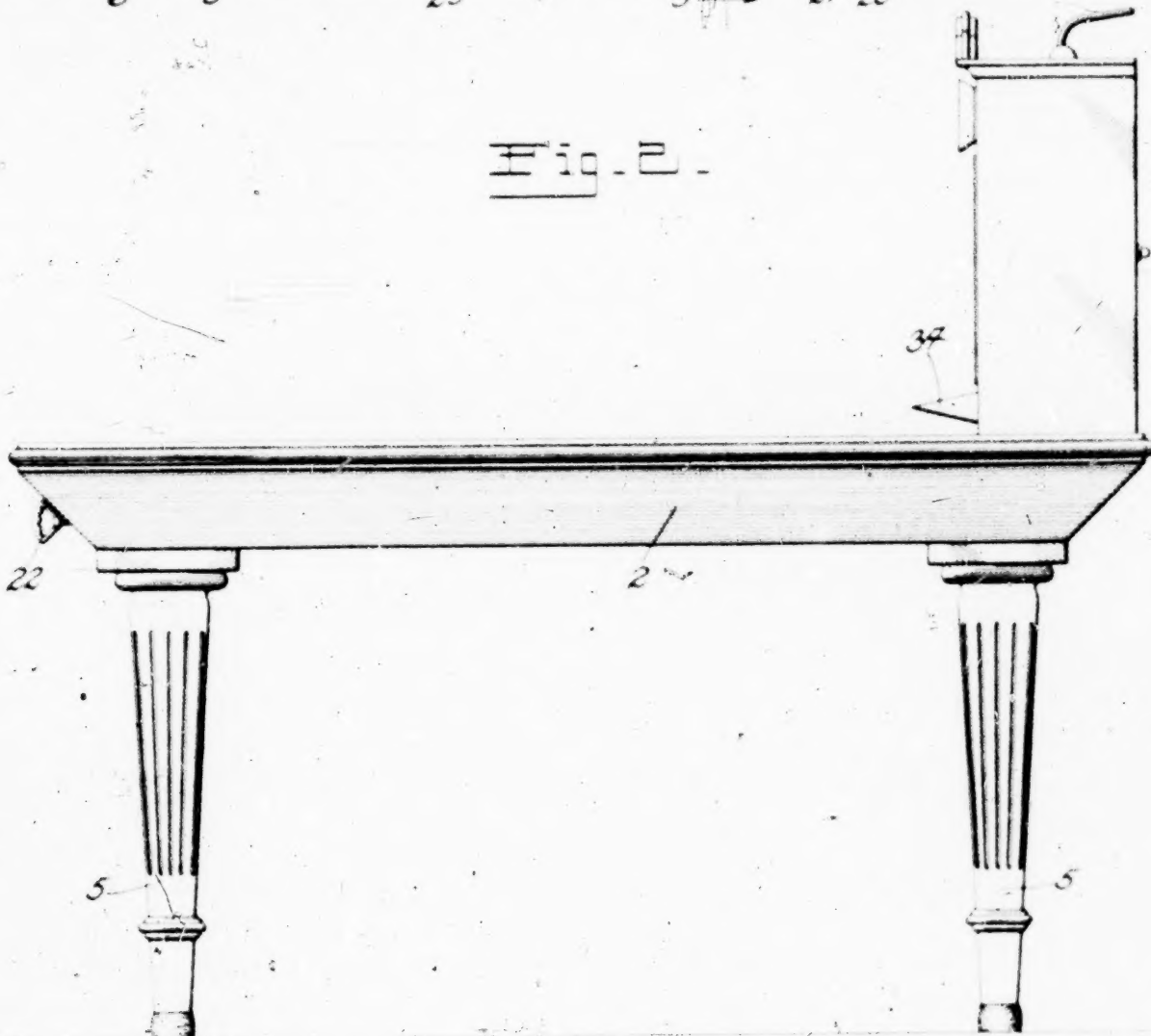
Original Filed Jan. 26, 1925

3 Sheets-Sheet 1

Fig. 1



Fig. 2



Inventor,  
David C. Mader,  
by *E. L. Lippert* Attorney.

March 29, 1927.

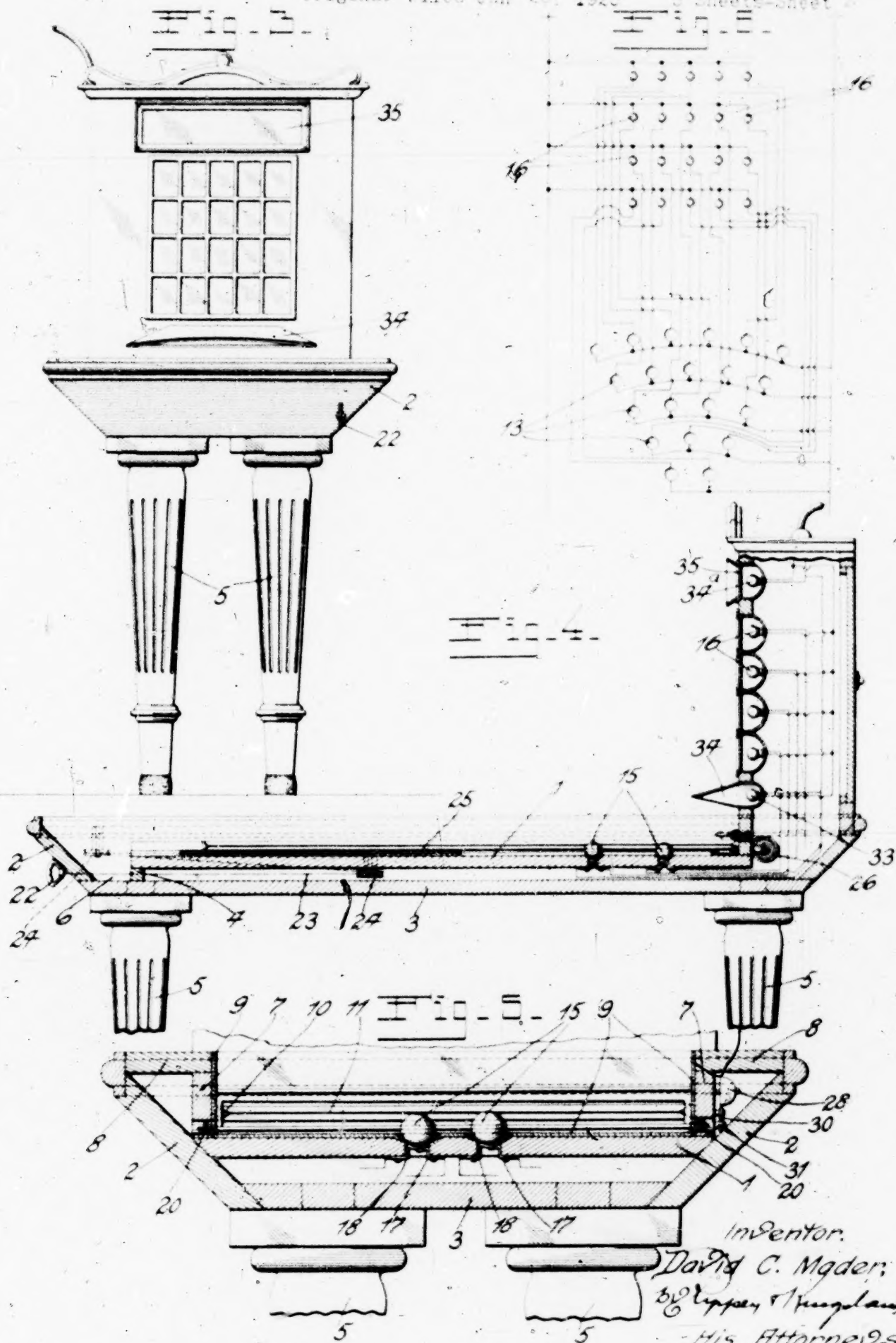
D. C. MADER

1,622,330

GAME APPARATUS

Original Filed Jan 26, 1925

3 Sheets-Sheet 2



Inventor.

David C. Mader,  
by *Clifford H. Hengland*  
His Attorneys.

March 29, 1927.

D. C. MADER

1,622,330

DAMP APPARATUS

Original Filed Jan. 26, 1925

3 Sheets-Sheet 3

Fig. 7

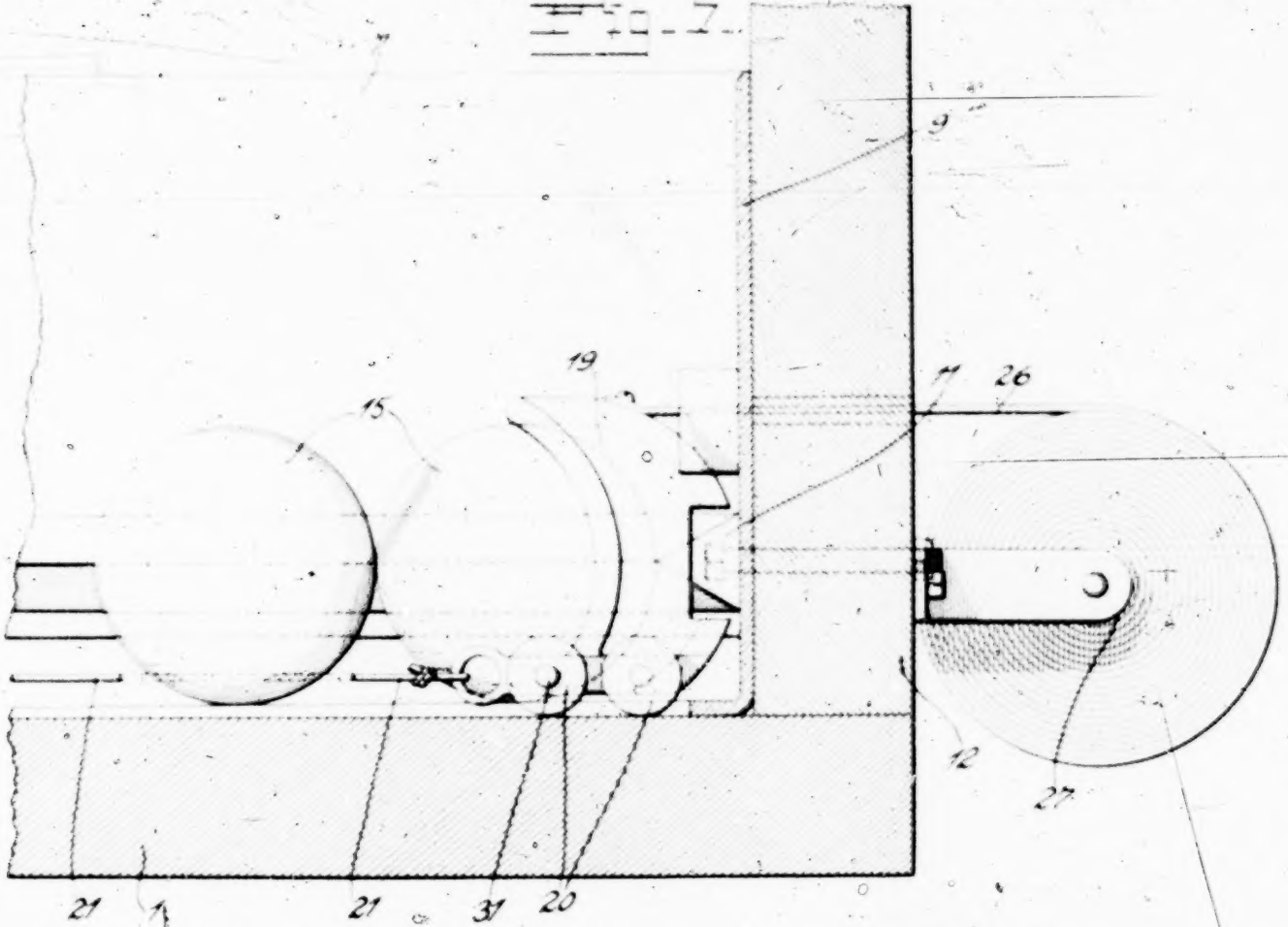


Fig. 8

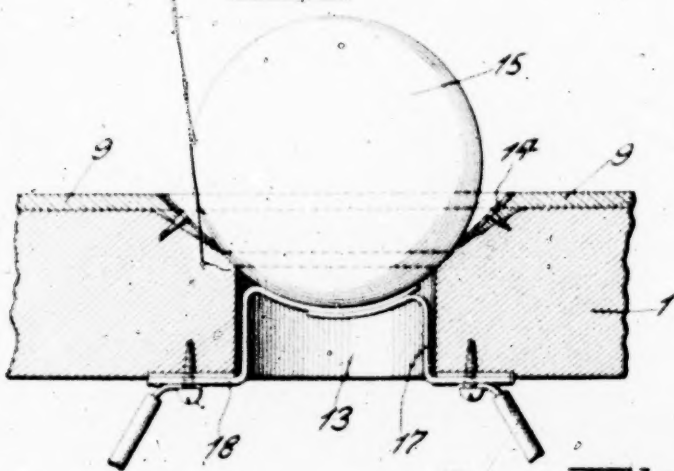


Fig. 9

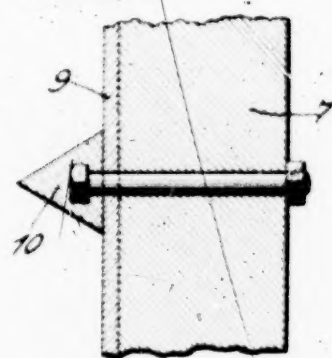
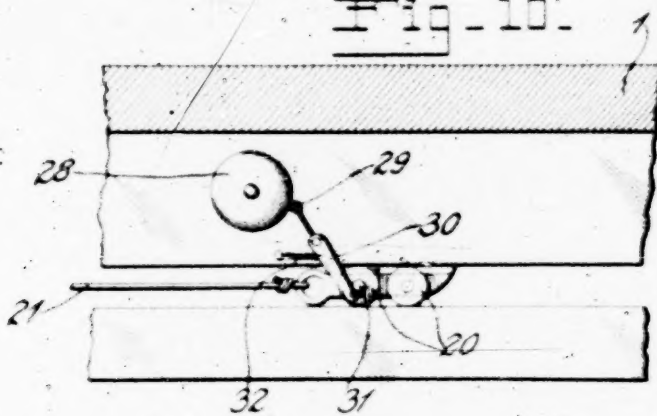


Fig. 10



Inventor:  
David C. Mader,  
By *Stippen, Highland*  
His Attorneys.



## UNITED STATES PATENT OFFICE.

DAVID C. MADER, OF ST. LOUIS, MISSOURI.

## GAME APPARATUS

Application filed January 26, 1925, Serial No. 4,780. Renewed January 19, 1927.

This invention relates to a game apparatus.

An object of the invention is to provide a novel game apparatus for amusement purposes involving some of the principles of familiar games such as bowling, billiards, etc., and in the scoring utilizing some of the principles of certain games in which playing cards are used, and the entire system being designed and arranged so that the principles thereof and the manner of playing the game may be readily understood and in which the scoring is quite simple. The skill with which the manually operated pieces of the apparatus are manipulated is an important factor in the success obtained by the individual players.

Another object of the invention is to provide a game apparatus utilizing a table and balls adapted to be rolled along the table to positions in which they will complete broken electric circuits to light lamps indicating the result of each play.

Another object of the invention is to provide a game apparatus of the type mentioned containing a signal device for indicating the clearing of the table after the completion of each game.

Other objects will appear from the following description, reference being made to the drawing in which—

Fig. 1 is a plan view of my improved game apparatus.

Fig. 2 is a side elevation thereof.

Fig. 3 is an end elevation.

Fig. 4 is a longitudinal vertical sectional view on the line 4—4 of Fig. 1.

Fig. 5 is an enlarged cross sectional view on the line 5—5 of Fig. 1.

Fig. 6 is a diagrammatic view showing the electric circuit system comprised within the invention.

Fig. 7 is an enlarged sectional view showing the device by which the balls are returned to the players after the completion of a play.

Fig. 8 is an enlarged sectional view showing the means by which the broken electric circuits are closed by the balls when successive plays are made.

Fig. 9 is an enlarged sectional view showing the elastic cushion used at the sides and one end of the table.

Fig. 10 is a view showing a signal device for indicating a clearing of the table after the player has completed his plays.

The table is of the approximate form of a

familiar billiard table including the table top 1, upwardly and outwardly inclined side and end walls 2, a wall 3 supporting the top 1 in spaced relation thereto by supporting strips 4. The legs 5 support the entire table. The top 1 terminates a distance inwardly from the forward end of the table, leaving a trough 6 to contain the balls until they are used in playing.

The side and end walls of the table rise to a proper height above the plane of the table top 1 and are connected with the upright confining border walls 7 by frame members 8. The upper surface of the table top 1 and the inner surfaces of the sides 7 are covered with a layer 9 of felt or the like and strips 10 of rubber are secured to the inner surfaces of the side walls to protect them from the impact of the balls and to afford proper resiliency to accelerate the balls in play. A similar strip 11 of rubber extends across the curved rear end 12 of the table.

Near the rear end of the table a series of cavities 13 are formed and lined with metal rings 14 to provide perfectly smooth surfaces and to protect the edges of the holes in the felt located at the cavities. Balls 15 are used in playing the game, the object being to roll the balls along the table in a manner to cause the balls to enter and remain seated in the cavities 13 having the highest scoring value. The cavities may be arranged in the form shown in Fig. 1 in transverse rows which may be curved or not as desired, with the row of highest scoring value adjacent to the rear end of the table and the rows being of progressively decreasing scoring value toward the forward end of the table from which the plays are made; or, the value of the scoring cavities may be arranged or placed in any other position from time to time, as desired.

The result of each successful play is indicated by a signal 16. The signals 16 correspond to the cavities 13, said signals comprising electric lamps each in circuit on one side with a contact member 17 and on the other side with a contact member 18. The contact members 17 and 18 are located in the cavities 13. The contact member 18 is resilient and when free from the weight of a ball is out of contact with the corresponding contact member 17, thereby providing a broken or open circuit, the lamp of which does not become illuminated until a ball rolls into the cavity corresponding thereto. When a ball rolls into a cavity 13 it presses the resilient con-



tact member 18 against the contact member 17, thereby closing the circuit to the corresponding signal lamp 16 which indicates to the players the successful completion of a play and the scoring value thereof.

The balls may be returned to the forward or player's end of the table by drawing a transverse element 19 along the top of the table to engage and actuate the balls toward the players. The ends of the element 19 are supported upon carriages 20, one of which is engaged by a connection 21 from a handle 22 (Figs. 1, 2 and 10), and the other of which is engaged by a similar connection 23 from said handle passing around sheaves 24. As the device 19 moves toward the player's end of the table the carriages 20 contact with the ends of bumper springs 25, but further movement of the device 19 is retarded but not stopped, causing the balls to continue to move toward the player's end of the table until they roll into the trough 6. The device 19 is returned to the rear end of the table by a connection 26 arranged to wind upon a spring actuated roller 27 of familiar construction which acts automatically to wind the connection 26 thereon when the handle 22 is released to return the carriage 19 to its starting position.

As an incident to the clearing of the balls from the table by operation of the device 19 a signal is given. In the present instance the signal is an audible one, comprising a bell 28 and a hammer 29 having knuckle joint pivot connection with a lever 30. A projection 31 on the adjacent carriage 20 engages one end of the lever 30 and moves the same in opposition to a spring 32 of the expansion type, which tends to actuate the lever 30 to stroke the hammer 29 against the bell. After the projection 31 passes beyond the lever 30 the spring 32 expands, thereby striking the hammer against the bell and signalling the fact that the table has been cleared.

The end of the table containing the cavities 13 is permanently illuminated by lamps 33 having a reflector 34 for deflecting the light to the top of the table.

The upper end of the apparatus may be constantly illuminated by lamps 34\* behind a glass panel 35 upon which may be displayed the name of the game which I have designated as "Pokerole".

From the foregoing it will be seen that I have provided a game apparatus and a method of playing the same, all of which may be readily comprehended and in the playing of which the game goes to the most skillful player. The game may be played and enjoyed by children as well as by older people and, if only reasonable care is exercised, no damage to the apparatus will be caused by playing the game.

It is obvious that numerous variations in the construction and arrangement of the

parts of the apparatus may be made without departure from the nature and principle of the invention. I do not restrict myself to the specific form of the invention shown, but contemplate such variations as may be found desirable within the scope of the appended claims.

What I claim and desire to secure by Letters Patent is:—

1. A game apparatus comprising a table, devices supported by the table for indicating the results of successful plays, positions defined upon the top of the table as positions of successful plays, balls arranged to be rolled along the top of the table to said positions in making successful plays, means for operating a corresponding one of said devices when a ball enters one of said positions thereby indicating the making of a successful play, and means indicating when said balls are removed from said positions.

2. A game apparatus comprising a table, devices supported by the table for indicating the results of successful plays, positions defined upon the top of the table as positions of successful plays, balls arranged to be rolled along the top of the table to said positions in making successful plays, means for operating a corresponding one of said devices when a ball enters one of said positions thereby indicating the making of a successful play, and a device for moving the balls from said positions along the table top toward the players.

3. A game apparatus comprising a table, a ball to be rolled along the top of the table, defined successful play positions in the top of the table to receive the ball when a successful play is made, indicating devices corresponding to said positions respectively and each being operated automatically and as an incident to the entry of the ball in the corresponding one of said positions, and means indicating when said ball is removed from any one of said positions.

4. A game apparatus comprising a table, a ball to be rolled along the top of the table, defined successful play positions in the top of the table to receive the ball when a successful play is made, indicating devices corresponding to said positions respectively, an electric circuit from each of said devices to the corresponding one of said positions, a circuit make and break device adjacent to each of said positions controlled by said ball to close the circuit to the corresponding one of said devices automatically and as an incident to the entry of the ball into one of said positions, and means for moving the ball from any one of said positions and along the top of the table towards the player.

5. A game apparatus comprising a table, a ball to be rolled along the top of the table, defined successful play positions in the top of the table to receive the ball when a suc-

cessful play is made, indicating devices corresponding to said positions respectively, an electric circuit from each of said devices to the corresponding one of said positions, a circuit make and break device adjacent to each of said positions controlled by said ball to close the circuit to the corresponding one of said devices automatically and as an incident to the entry of the ball into any one of said positions, a device for moving the balls from said positions toward the players, and a signal indicating when the ball is removed from any one of said positions.

6. A game apparatus comprising a table having a series of cavities in the top thereof, a series of indicating devices corresponding to the cavities respectively, normally open electric circuits leading from said cavities to the corresponding indicating devices, balls arranged to roll along the top of the table and into said cavities, means controlled by the balls entering the cavities to operate

the corresponding indicating devices to indicate the results of plays, and means for moving the balls along the top of the table toward the players after the completion of plays.

7. A game apparatus comprising a table having a series of cavities in the top thereof, a series of indicating devices corresponding to the cavities respectively, normally open electric circuits leading from said cavities to the corresponding indicating devices, balls arranged to roll along the top of the table and into said cavities, means controlled by the balls entering the cavities to operate the corresponding indicating devices to indicate the results of plays, means for moving the balls toward the players after the completion of plays, and means for signalling the fact that the plays have been completed and the balls moved toward the players.

DAVID C. MADER.

Jan. 6, 1931.

L. SCHNEIDER ET AL

1,788,336

WEIGHT OPERATED SWITCH

Filed Dec. 16, 1927

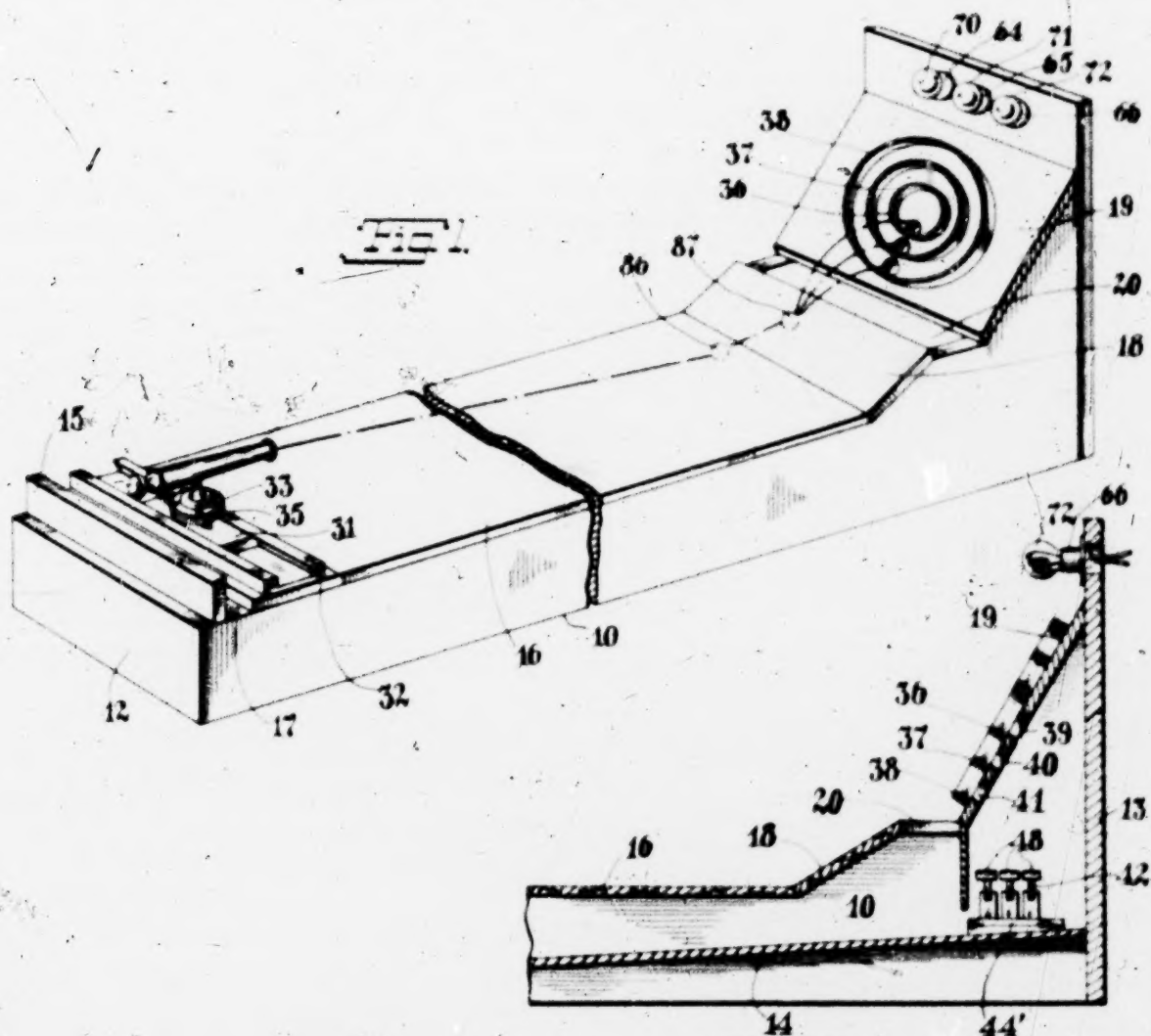


Fig. 1

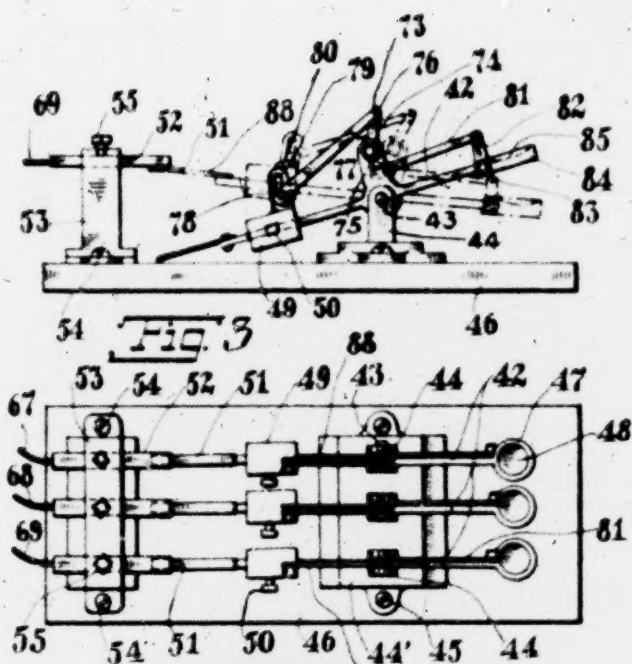


Fig. 2

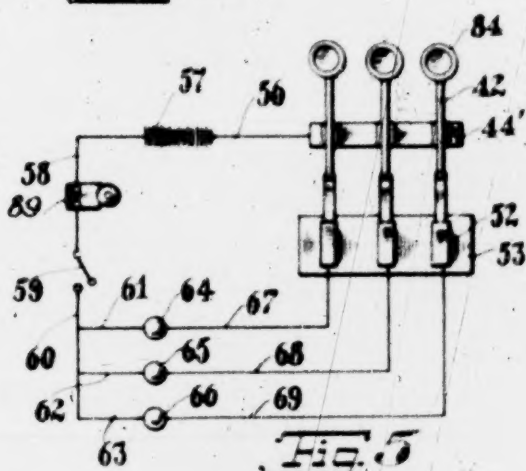


Fig. 3

Fig. 4

INVENTOR'S  
Samuel Schneider  
Martin M. Rossinow  
BY *Voltaire Holachef*  
ATTORNEY



## UNITED STATES PATENT OFFICE

SAMUEL SCHNEIDER, OF NEW YORK, AND MARTIN M. ROSSINOW, OF BROOKLYN,  
NEW YORK

## WEIGHT-OPERATED SWITCH

Application filed December 16, 1927 Serial No. 240,352

This invention relates to a new and amusing prize game device in the nature of an electric skee ball game.

The object of the invention is to provide an electric skee ball game of novel construction and arrangement of parts hereinafter more fully described, claimed and illustrated in the accompanying drawing.

Fig. 1 is a perspective view of our improved electric skee ball game.

Fig. 2 is an enlarged fragmentary longitudinal sectional view thereof.

Fig. 3 is a side elevational view of the electric ball engaging mechanism as embodied therein.

Fig. 4 is a top plan view thereof.

Fig. 5 is a schematic wiring diagram.

As here embodied my improved electric skee ball game comprises a suitable stand of box like construction consisting of longitudinal side members 10 and 11, front and rear members 12 and 13, and a lower longitudinal member 14 somewhat inclined downwardly toward the front member 12, for the purpose as hereinafter set forth. The support 15 extends intermediate the side members 10 and 11, adjacent to the front member 12. The top member 16 extends across the said side members 10 and 11, in proximity to the said support 15, so as to provide an opening 17, intermediate the said support 15 and the top member 16. The said top member extends longitudinally therefrom adjacent to the skee board 18. The skee board 18 is somewhat angularly inclined upwardly. The target board 19 is angularly inclined upwardly, at a somewhat greater angle to the horizontal than the skee board 18, and is positioned in proximity to, and at the rear of the said skee board, so as to provide an opening 20 intermediate the said skee board and the said target board. The said side members 10 and 11 are suitably formed or cut so as to support the said skee board and the said target board in the above stated angular positions.

The miniature cannon 21 is designed to engage in the support 31, which is of dovetail construction and slidably engages in a similar shaped opening formed in the guide

member 32. The guide member 32 is secured to the said top member 16 adjacent to the said opening 17. Cap member 33 is secured as at 35, by bolts, screws, or the like, to the support 31. The latter described construction is such as will permit the cannon to be pivoted horizontally, and vertically and which will permit the said cannon to be slidably positioned in the guide 32, as may be desired for the purpose as hereinafter set forth.

The inner, intermediate and outer ring members 36, 37 and 38 are secured to the central portion of the target board 19 and are positioned co-axial. The aperture 39 is formed in the target board 19 inside the inner ring member 36. Similar apertures 40 and 41 are formed in the target board 19, and are positioned inside the intermediate and outer ring members 37 and 38, directly below the said aperture 39.

The levers 42 are pivotally attached intermediate thereof as at 43, to the lug elements 44 of the bracket 44' secured as at 45 to the base member 46. Counter weights 49 are slidably mounted on one of the extremities of the levers 42 and are held in any desired position by means of the threaded members 50, set screws, or the like. Leaf springs 51 are secured to the extremities of the levers 42 adjacent to the counterweights 49 and normally rest on the base member 46. Contact members 52 are slidably mounted in the support 53, secured as at 54 to the base member 46 and are held in any desired extended position by means of the threaded members 55, set screws or the like, and are positioned directly above the springs 51.

The bellcrank 73 is secured to the pin 74 rotatively mounted in the lug element 75 of the lever 42, directly above the pivot point 43. The rod 77 is pivotally attached to one extremity of the bellcrank 73 and has secured to and extended from its opposite extremity a pin 78 adapted to freely engage in an elongated opening 79, or slot formed in the lug element 80 of the said counter-weight 49. The rod 81 is pivotally attached to the opposite extremity of the bellcrank 73 and is similarly attached to the lever 82 secured to the pin 83 rotatively mounted in one extrem-

ity of the lever 42, opposite the counter-weight 49. The ball receiving member 84 is secured to and extended from the said pin 83 and has formed therein a concave recess 85. The member 50 may be temporarily loosened and the counter-weight 49 shifted along the length of the lever 42, and by reason of the connected apparatus the inclination of the ball receiving member 84 relative to the lever 42 will be automatically changed. As the weight is moved away from the pivot 43 the force necessary to move ball receiving end of the lever 42 downwards will be increased, and simultaneously the ball receiving member will be tilted downwards for receiving only a component part of the force of a ball striking the same, or stated in other words the striking forces will be decreased. By the cut and try method the weight 49 may be properly positioned for obtaining a satisfactory working of the device.

The bracket 44' is connected by means of a suitable electric wire 56 to the battery 57 in any suitable convenient source of electric current.

The battery 57 is connected by means of a similar wire 58 to the usual conventional electric switch 59. The switch 59 is connected by means of similar wires 60 and the wires 61, 62 and 63, to the electric light sockets 64, 65 and 66, respectively. The electric light sockets 64, 65 and 66 are connected by means of the wires 67, 68 and 69 respectively, to the various contact members 52.

The electric light bulbs 70, 71 and 72, preferably of any desired different color, are mounted in the sockets 64, 65 and 66, respectively, secured to the said target board 19, above the said ring members 36, 37 and 38.

Our improved game device is played as follows: a ball is placed in the said cannon and ejected therefrom by means of the mechanism provided in the said cannon. The player aims the cannon so as to permit the ball 86, ejected therefrom as above set forth to strike the said skee board, as designated by the reference numeral 87. The said ball will then bounce or carum from the skee board, it being the object of the player to carum the said ball into one of the apertures 39, 40 and 41, which if realized will permit the ball to fall into the ball receiving member positioned directly below the said aperture through which the ball falls. It is obvious from the foregoing description that the ball will cause the lever 42 to assume the position designated by the reference numeral 88, which will complete an electric circuit and light one of the bulbs 70, 71 and 72, and sound a buzzer or other audible signal when either of the lights is light, a prize is awarded to the player in this event. The ball will then roll from the ball receiving member and will be returned to the player by means of the lower longitudinal member when

pivoted downwardly will permit the said ball to roll therefrom, and that the said lever 42 will return to its normal position. It is pointed out that when a ball falls in the receiving member 84, the action of pin 78 in slot 79 is downwards so that no motion results from the pin engaging in the slot 79, though of course the lever 42 will pivot about 43 to a position indicated by dot dash lines 88. The only function of the pin 78 in the slot is that when the weight 49 is shifted, lever 77 may be moved as limited by the slot 79 for convenience only in placing the weight into a new position. As soon as the weight assumes a new position, the pin 78 will seek a position at the bottom of slot 79. For each different position of the weight the receiving member 84 will assume a different inclination relative to the lever 42, and obviously a ball striking the receiving member 84 will lose some of its speed of descent depending upon the angle just stated, this lost speed being turned into a component force downwards for moving the lever 42 about pivot 43.

Having thus described our invention, what we claim as new and desire to protect by United States Letters Patent is:

1. In a device of the class described, a lever pivoted intermediate of its ends, a weight slidably mounted on one side of the lever, a ball receiving member pivotally mounted on the other side of the lever, and connections between the weight and the ball receiving member, arranged for tilting the ball receiving member downwards as the weight is moved away from the pivot point of the lever.

2. In a device of the class described, a lever pivoted intermediate of its ends, a weight slidably mounted on one side of the lever and arranged for being fixed in various positions along the length of the lever, a ball receiving member pivotally mounted on the other side of the lever, and connections between the weight and the ball receiving member, arranged for tilting the ball receiving member downwards as the weight is moved away from the pivot point of the lever.

3. In a device of the class described, a lever pivoted intermediate of its ends, a weight slidably mounted on one side of the lever and arranged for being fixed in various positions along the length of the lever, a ball receiving member pivotally mounted on the other side of the lever, and connections between the weight and the ball receiving member, arranged for tilting the ball receiving member downwards as the weight is moved away from the pivot point of the lever, the said lever being formed with a lug element, and the said connections being mounted on this lug element.

In testimony whereof we have affixed our signatures:

SAMUEL SCHNEIDER.  
MARTIN M. ROSSINOW.



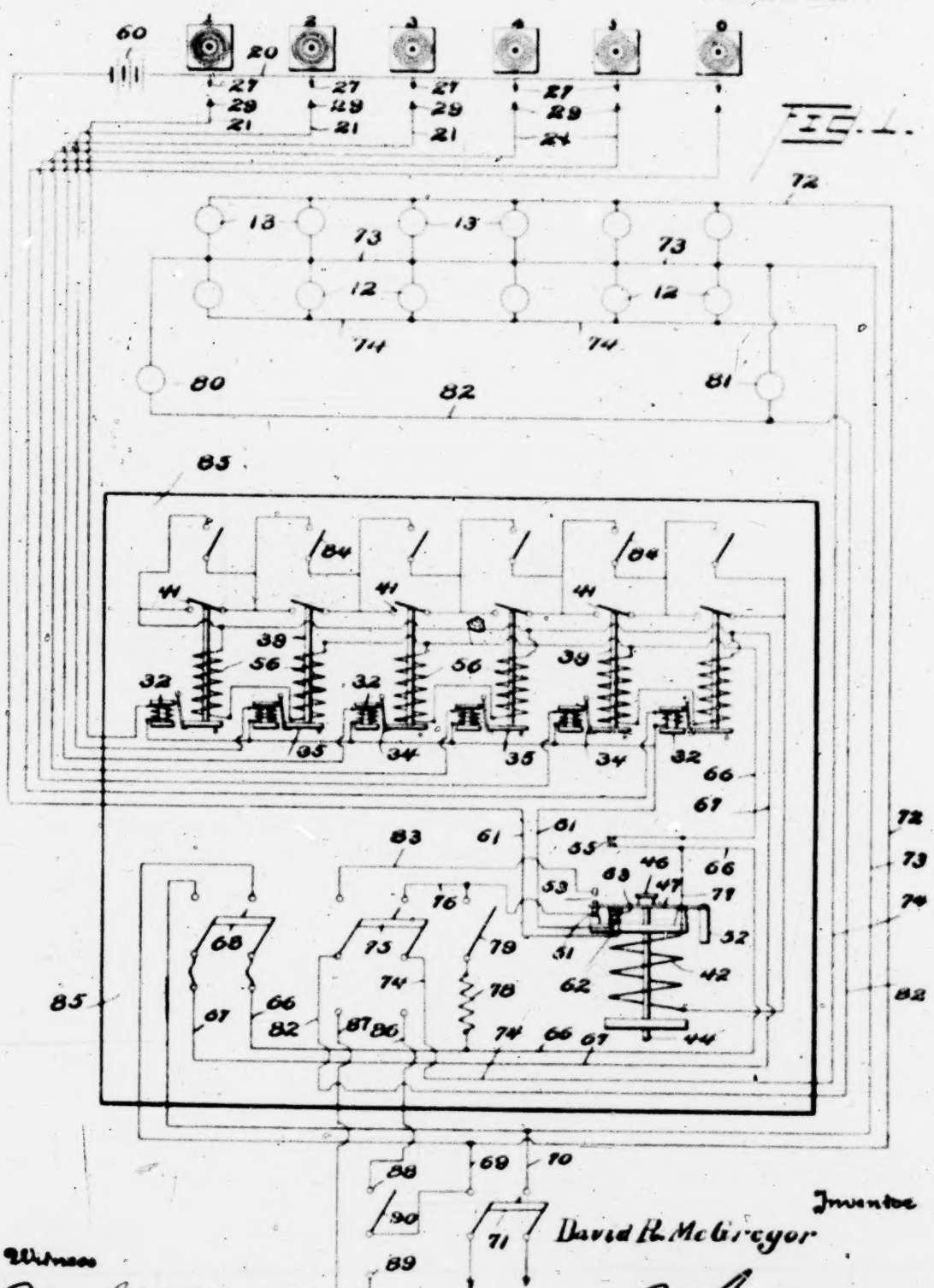
D. R. MCGREGOR.  
TARGET APPARATUS.

APPLICATION FILED MAR 29, 1918

1,260,691.

Patented Mar. 26, 1918.

2 SHEETS-SHEET 1.



Witness  
*Harold S. Strands*

Inventor  
*David R. McGregor*

*R. F. Leonard*  
his attorney

D. R. MCGREGOR.

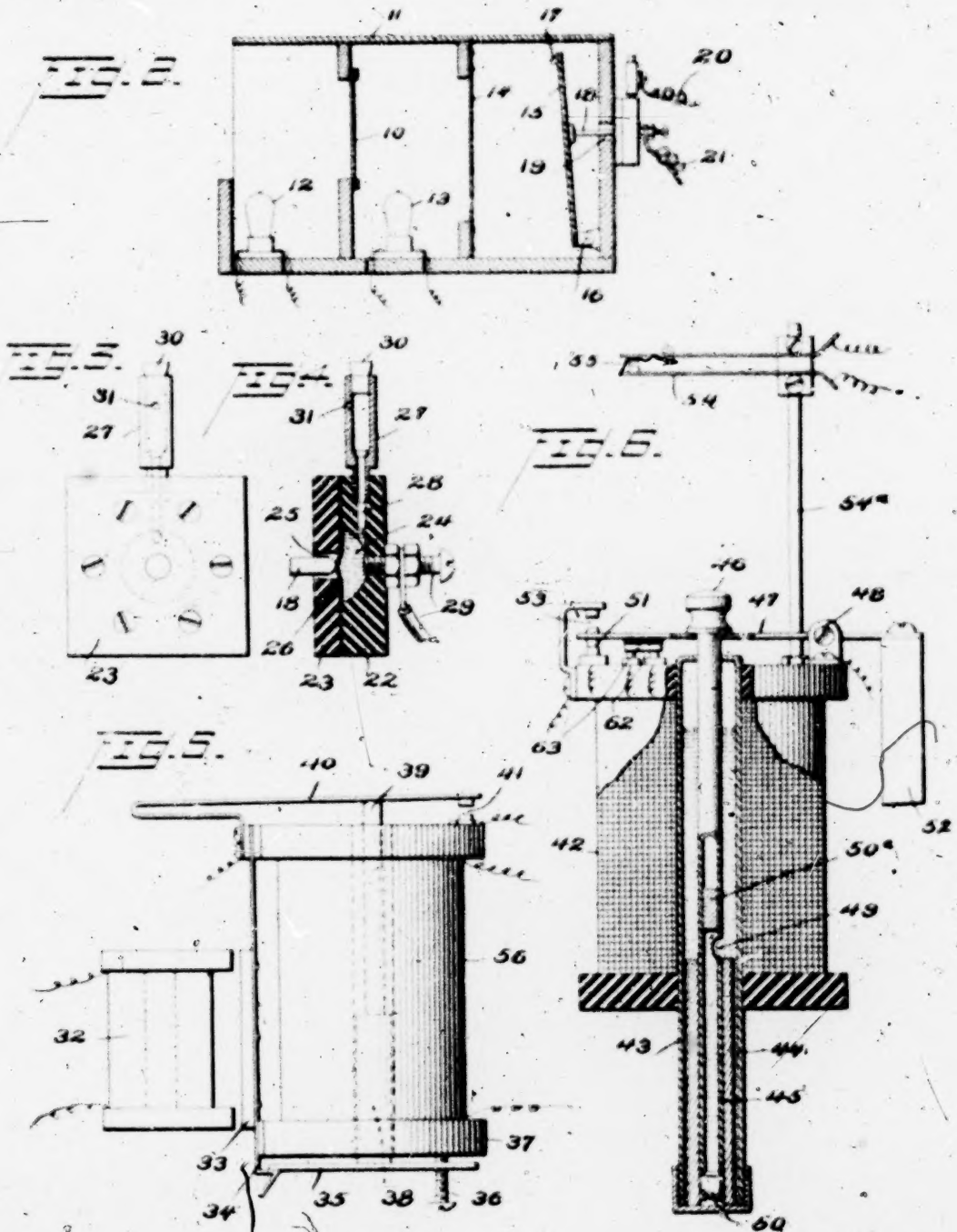
TARGET APPARATUS.

APPLICATION FILED MAR 29, 1918.

Patented Mar. 26, 1918.

2 SHEETS-SHEET 2

1,260,691.



Witness

Harold S. Evans

By

David R. McGregor

197 Edward

Attorney

# UNITED STATES PATENT OFFICE.

DAVID ROSS MCGREGOR OF SPRINGFIELD, OHIO

## TARGET APPARATUS.

1,260,691.

Specification of Letters Patent

Patented Mar. 26, 1918.

Application filed March 29 1916. Serial No. 87,552

*To all whom it may concern:*

Be it known that I, DAVID ROSS MCGREGOR, a citizen of the United States, residing at Springfield, in the county of Clark and State of Ohio, have invented certain new and useful Improvements in Target Apparatus; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

The invention relates to target apparatus; and it relates more particularly to automatic "self-spotting" targets.

So-called self-spotting target devices are well known in the art and are in common use in indoor shooting ranges and elsewhere. In a typical form, such a target device consists of a target screen of cardboard or other material easily perforated by a rifle bullet, a suitable distance to the rear of which is arranged a metal plate or backstop serving to arrest the bullet. Behind the paper target is a source of light; so that if, after the target has been shot, the illumination of the front of the target is cut off entirely or is dimmed sufficiently, the hole made by the bullet passing through the target appears thereon as a point of light. While the shooter is aiming and firing; however, the front of the target must be brightly illuminated in order that he may aim accurately. Hence the "spotting" of his subsequent shot requires a suppression or reduction of the normal illumination in front of the target, and a strong lighting up of the target from the rear. The rear illumination may, however, be maintained constantly at the necessary intensity.

It has been proposed heretofore to effect the spotting operation automatically by utilizing the impact of the bullet against the backstop to close a circuit and thereby to energize mechanism for cutting off the illumination in front of the target, and also to turn on a light at the rear in case the latter is not kept burning continuously. In such proposed devices, however, the return to shooting phase, that is, to the condition where the front of the target is again fully illuminated, has always been effected manually so far as I am aware.

An object of the present invention is to provide mechanism for rendering the com-

plete cycle of operations automatic; so that, in other words, the impact of the bullet against the backstop will set in operation mechanism whereby the conditions of target illumination will change automatically from firing to spotting phase, and then, after a suitable interval of time, will return to firing phase, all without any attention on the part of the shooter or an attendant.

The invention contemplates also the provision of mechanism for operating a plurality of self-spotting targets automatically, a matter of much greater practical importance than the automatic operation of a single target device. Ordinarily a rifle range comprises a group of targets arranged side by side in order that a number of shooters may participate at once. In shooting contests it is usual for competitive squads to fire in alternation at the targets, each man of a squad shooting a certain number of times at his target in succession from the same distance, or from different distances, a second squad then taking the place of the first. In order to prevent the attention of the shooters from being distracted to the detriment of their aim; it is customary to darken the range while the squad is firing, only the targets being illuminated. I have found, however, that where the several targets in question operate independently of each other on the automatic principle above described, the attention of a shooter aiming at his particular target is so distracted by the flashing of the other targets which may have been shot ahead of him by other members of the squad, that his aim is apt to be very materially disturbed and its accuracy lessened.

A very important feature of my invention is therefore the provision of means whereby a plurality of target devices may be operated automatically, the operation being so controlled, however, that it cannot occur until all the targets of the group have been shot, whereupon all the targets operate automatically in unison, passing from firing phase to spotting phase, and back again to firing phase.

In addition, the invention contemplates, as will hereinafter appear, the perfecting of various mechanical and electrical details especially useful in target apparatus and systems of the general character here in-

volved, though not necessarily limited to such use.

My invention, in so far as it relates broadly to a self-spotting target operating automatically through a complete cycle of phases as above described, comprises an organization of parts in which, upon impact of the bullet with the backstop, the light or lights illuminating the front face of the target are cut out or dimmed and are maintained in this condition for a definite interval of time of regulable duration, after which the illumination is caused to assume its original and normal intensity. In practice the apparatus is so arranged that the backstop is slightly moved by impact of the bullet and thereby closes an electric circuit containing electrical means which is thereupon energized to break a circuit feeding a source of illumination in front of the target, or else to introduce into such lighting circuit a resistance effective to dim the source of illumination sufficiently for the purpose in view. Said electrical means includes or controls an element which may operate on the principle of a dash pot and which is arranged to return the lighting system to normal again automatically after the desired period of delay.

The invention as applied to a system including a plurality of targets comprises a set of relays or drops, one for each target, each relay being so connected electrically to the corresponding target backstop that upon impact of the bullet with the backstop, the relay is operated to close one gap in a circuit which includes as many other similar gaps as there are targets; and it comprises also a group controller which is wired in series with said gaps, and which can operate only when all the gaps corresponding to the targets being operated are closed. When its circuit is closed, this group controller operates to cut off or dim the illumination in front of the targets. It operates also as a timing device whereby the illumination of the front of the targets is not restored to normal until after the desired period of delay.

In order to explain clearly the principles of the invention without intending thereby to be limited to any specific construction or arrangement of parts, I have illustrated in the accompanying drawings an embodiment of the invention which has proved satisfactory in practice. In these drawings:

Figure 1 is a diagram showing the electrical relations of the various parts of a complete system embodying the invention;

Fig. 2 is a longitudinal section of one of the targets and the parts immediately associated therewith;

Figs. 3 and 4 are an elevation and transverse section, respectively, of one form of contact device which is especially useful;

Fig. 5 is an elevation of one of the individual drops or relays which is associated with each target device;

Fig. 6 is an elevation, partly in section, of the group controller and timing device.

The system here illustrated by way of example comprises a group of six targets which are indicated diagrammatically in Fig. 1 and are numbered consecutively from 1 to 6. In Fig. 2, which shows a practical form of target device in greater detail, 10 represents a standard target of cardboard or the like suitably supported in a housing 11 and illuminated in front by an incandescent lamp 12. To the rear of the target 10 is lamp 13 whose light may be reflected forwardly upon the target by means of a screen 14 of glazed white cardboard or the like. Only one front light and one rear light are shown in the drawing, but obviously more may be used where desirable. To the rear of the screen 14 is a steel backstop plate 15 which is pivoted below as at 16, and which is shown as normally inclined slightly forward from the vertical, stop 17 being provided to limit its forward movement. On its rear face the backstop plate carries a projecting pin 18 which passes freely through an aperture 19 in the back wall of the target housing. When the backstop is struck by a bullet, it is moved slightly on its pivot toward the rear, and the pin 18 operates to close some form of contact between leads 20 and 21. As shown in Figs. 2, 3 and 4, the contact device in this instance comprises two blocks of insulation 22 and 23, block 22 being hollowed out to provide a mercury well at 24 and block 23 being provided with an opening 25 to receive the end of pin 18. A rubber diaphragm 26 covers the mercury well and the two blocks are held firmly together by suitable securing means. A hollow iron stud 27, which may serve as one terminal binding post, is set into the upper edge of block 22 and communicates with reservoir 24 through a small passage 28. Screw 29 serves as the other terminal binding post and also as a means for adjusting the level of mercury in the passage 28. When pin 18 moves rearwardly, it presses against the rubber diaphragm 26 and forces the column of mercury upwardly into contact with the stud 27, thus electrically connecting the stud with the terminal 29. An opening normally closed by stopper 30 is provided for supplying mercury to the reservoir, while a small air vent 31 permits free rise and fall of the mercury column. Although a contact device of this description is particularly desirable on account of its being dirt proof and moisture proof, and because it presents a fresh contact surface every time it operates any other suitable form of contact may be used such as, for example, an ordinary



spring contact like device 34-55 hereinafter described in connection with Fig. 6.

Each of the target devices is electrically connected by leads 20, 21 with a relay or drop, which may be on the order of an ordinary annunciator drop and whose function is to effect the closing and opening of one of the serially arranged gaps in the group controller circuit before mentioned. A typical form of such drop or relay is shown in Fig. 5, where the winding 32 of an electromagnetic trip device is arranged to be energized upon closing of the contact 27, 29 at the target, and thereby to attract movable armature 33 which is carried by a spring catch 34, thus drawing the catch away from its normal position and releasing the drop head 35. The latter falls freely until stopped by the head of an adjustable screw 36, mounted at the lower end of the solenoid 37. The iron stem 38 of this drop constitutes the movable core of the solenoid, and from this core extends upwardly a rod 39 of hard rubber or other suitable insulating material. Normally the parts occupy the position shown in Fig. 5, the upper end of the rod 39 lifting the flat spring 40 to keep gap 41 open. When, however, the drop 35 is allowed to fall as described, the spring 40 is free to descend and close the gap 41. The several normally open contacts 41 are in circuit with the group controller and timing device which is illustrated in Fig. 6; but the circuit is not closed until all of the drops have been released to close said gaps. When the last of the drops has been released, the winding 42 of the group controller is energized. This winding is around a tube of brass or the like 43 which extends some distance below the lower end of the winding and is capped at the lower end as shown. The tube contains an iron core 44 which fits rather closely within the tube but is freely movable up and down therein. The core 44 is secured to a small tube 45 of brass or the like which extends through an opening in the upper end of the tube 43, and through an opening in conductive rocker arm 47, pivoted at 48. The tube 45 terminates in an insulating button 46 which normally rests upon said arm 47 and holds it down. The tube 43 contains a liquid such as a thin oil, and with the core plunger 44 it forms a dash-pot device. A lateral aperture 49 in the small tube 45 somewhat above core 44 permits liquid to enter into the small tube from above; while at the lower end of the small tube is provided a ball check valve 50, which permits downward passage of liquid but prevents passage upward. Above opening 49, the tube is closed as by plug 50.

As will be hereinafter more fully explained, the group controller device is so connected to the lighting circuits of the target system that in the position shown in

Fig. 6 with contact 51 closed, the lights 12 are on and the targets are therefore fully illuminated. When the winding 42 is energized as above explained, the core 44 is drawn suddenly upward into the winding, this movement being permitted to occur rapidly on account of the fact that the oil in the dash pot can pass freely through tube 45 and past check valve 50 to the under side of the piston. As button 46 no longer rests on rocker arm 47, the counterweight 52 elevates the arm, breaking contact 53 and making contact 55. This cuts out or dims lights 12 of the targets, while the closing of contact 53 cuts in other lights which may be located at a considerable distance in front of the targets and which are to be described later. Rod 45 continues to travel upward until it strikes adjustable spring contact arms 54, thus closing the contact 55 and, through suitable circuit connections, energizing winding 56 of each of the relays or drops shown in Fig. 5. In each of these latter devices, therefore, the core 38 is thus pulled upwardly and rod 39 pushes up spring contact arm 40 and breaks contact 41, thus restoring the drops to the position in which they are normally held by spring catches 34. This opens the circuit through winding 42 and permits core 44 to settle back to its normal position. In descending, it first opens the contact 55 and then, after an interval of some seconds, the button 46 again strikes contact arm 47, carrying it down to open contact 53 and to close contact 51. All parts of the target system are now back in normal position or shooting phase. The contact arms 54 are supported at an adjustable height above the solenoid controller by a rod 54', the arms being suitably insulated.

The electrical relation between the parts above described is apparent from an inspection of Fig. 4. Each of the backstop contacts 27, 29 is connected in circuit with a suitable source of current, such as a battery 60, and with one of the relays or drops previously described in detail. The trip windings 32 of these drops are connected in parallel to a common return 61 in which there is a gap at 62, which is normally closed by a movable bridging contact 63, carried by but insulated from the rocker arm 47. The purpose of this arrangement will appear later.

It will be seen that the windings 56 of the drops are connected in multiple series, two windings in each series, across branch mains 66 and 67, which connect through switch 68 with local mains 69 and 70. The drop windings circuit is normally open at 55, however, as previously explained. The mains may conveniently be the usual lighting mains. Switch 71 controls the supply of current to the whole system. Branches 72, 73 supply the rear lights 13 which in the



present example burn continuously. The front lights 12 are across branches 73, 74, branch 74 being normally connected to branch 66 through switch 75, lead 76, closed contact 51, rocker arm 47, and lead 77. Resistance 78 is in shunt with contact 51 through switch 79. Lights 80 and 81 are additional lights which normally are not burning, but which are lighted when the front lights 12 are cut out by the opening of their feed circuit at 51. Light 80 may be a ceiling light at some distance in front of the targets. The employment of some such light is essential where lights 12 are entirely cut out during the spotting phase, in order that the position of the "spot" on the target may be read. If lights 12 are merely dimmed, the use of a light or lights 80 is optional. Light 81 is conveniently located over the position of the shooters, and while convenient, it is not indispensable. Both 80 and 81 are connected across branches 73 and 82, branch 82 going to the normally open contact 53 by way of switch 75 and lead 83.

If at any time it is desired to shoot at fewer than six targets, as where there are less than six to a firing squad, any of the gaps 41 may be short-circuited by closing the corresponding switches 84. All but one of the gaps may thus be short-circuited and the automatic operation effected by a single participant shooting at the single remaining target.

The relays, group controller, and various hand switches may be mounted on a switchboard 85 which is conveniently located at a point easily accessible to the shooters.

The operation of the system is apparent from the foregoing, but for clearness it will be briefly summarized. Assuming switches 71, 68, and 79 to be closed, double-throw switch 75 to be in its upper closed position, and the other parts of the system to be in the positions indicated in Fig. 1, a bullet fired through any of the targets 10 and striking backstop 15, moves the backstop slightly toward the rear, closes contact 27, 29, and completes the circuit through the battery, thus energizing the corresponding trip coil 32, thereby releasing drop head 35 and closing gap 41. As each target is shot, the same operation occurs. The order in which the targets are hit is wholly immaterial, and several or all may be hit simultaneously. The lights are unaffected until the last target has been hit, and the last gap 41 closed. The closing of the last gap completes the circuit through winding 42 of the group controller, draws the solenoid core 44 sharply up, breaking contact 51, and making contact 53. Current for lights 12 must now pass through resistance 78, and consequently these lights are so dimmed that the bullet holes in the targets 10 show

up as bright points of light by reason of the continuous illumination at the rear afforded by lights 13. At the same time the light from 12 is sufficient to enable the target score to be read, or if not, this necessary amount of light may be supplied by ceiling light 80 which has been cut in by the closing of contact 53.

In the meantime, the upward movement of core 44 has resulted in completing at 55 the circuit through the relay windings 56, whose cores are thereupon drawn up to break the controller circuit at gaps 41. Winding 42 being thus deenergized, core 44 and rod 45 sink slowly back to their normal position, breaking contacts 55 and 53, and making contact 51. This deenergizes relay coils 56, turns out lights 80 and 81, and restores lights 12 to full normal brilliancy.

It is to be understood that if switch 79 be left open, lights 12 are extinguished when their feed circuit is opened at 51.

Instead of energizing trip coils 32 from a battery, suitable connection to the lighting mains may be substituted. The separate battery circuit has some advantages, however, in that it obviates any possible flickering of the lights 12 as the relay devices are successively tripped. Although these trips take but little energy, they may use enough to affect the line voltage perceptibly, especially in the case of an A. C. system with small local transformer, and thus to cause annoying variation in the lights 12 which, as before noted, should be of constant intensity during the shooting phase.

It is also to be noted that the circuits through trip coils 32 are opened at 63 in the common battery return when rocker arm 47 lifts, and that they remain open throughout the spotting phase. This arrangement obviates the possibility of any of the relays failing to reset properly. For example, suppose that target No. 5 happens to be the last target of the six to be shot on. When No. 5 target is shot, No. 5 relay drops, the circuit through the solenoid group controller is instantly completed, and the solenoid core shoots up, switching off lights 12; and upon closing contact 53, all the relays or drops are reset as already described. Suppose now that the backstop plate of target No. 5 should vibrate a little and occasion a second closing of its pair of contacts 27, 29 after all the drops have been reset. No. 5 drop will be tripped; but as the controller circuit is open at five other points, the resetting mechanism will not be operated again during this particular cycle, and the lights 12 come on again with No. 5 drop down. This would make no special difference if, in the next firing round, any of the targets other than No. 5 were the last

shot on. But assume No. 5 target is again the last. Inasmuch as its drop is already tripped and the corresponding circuit gap 41 is closed, the lights 12 will go out or be dimmed after five men have shot instead of six. With the system of wiring here shown, however, such an occurrence is impossible because the common return 62 is opened the instant the solenoid core 44 starts to rise and before any of the drops have been reset. Coming down slowly, the core does not again close the battery circuit for a certain period of time, say ten seconds, and by that time vibration of the backstop plates has entirely ceased. I consider this arrangement an important specific feature of my invention in its preferred form.

The switch 75 is here shown as a double-throw change-over switch to permit the automatic operation to be temporarily dispensed with and the operation to be effected by hand, whenever such hand operation is for any reason desirable. In the lower position of the switch, the relays and the group controller are entirely disconnected from the mains. Leads 86, 87 now evidently take the place of leads 76 and 83, respectively, terminals 88 and 89 corresponding to contacts 51 and 53, and being alternatively connectible to main 69 by hand switch 90. This arrangement for hand operation obviously is not an essential part of the system and may ordinarily be omitted.

Instead of the replaceable cardboard reflector 14, I may employ a reflector of tin or other suitable material hinged to the housing in much the same way as backstop 15 but arranged to be normally out of the line of bullet flight, and to be held in this position either by its own weight or by means of a counter-poise. By means of a solenoid connected in shunt with lights 80 and 81, each time the target passes through spotting phase lights 80 and 81 are lighted, the hinged reflector is drawn from its normal horizontal position to the vertical position occupied by reflector 14 as illustrated. In this position the bullet hole in target 10 is sharply spotted with the aid of the reflector and when lights 80 and 81 go out again at the end of the spotting phase, the hinged backstop swings back again out of the way. This arrangement eliminates the necessity of replacing the reflector card from time to time.

While a practical embodiment of the invention involving certain specific mechanical and electrical features and arrangements has been illustrated and described for the purpose of disclosing the best form of my invention at present known to me, the invention is not limited to such details but comprises broadly all constructions embodying the novel principles herein set forth and

coming properly within the scope of the appended claims.

What I claim is:

1. Target apparatus comprising, in combination, a plurality of targets, means for illuminating the front of each target, means operable by bullet impact to reduce the illumination of each target, and means capable of operating such illumination-reducing means only after all the targets have been shot.

2. Target apparatus comprising, in combination, a plurality of target devices, illuminating means for each target device, and controlling mechanism operable to modify the illumination afforded by said illuminating means, said controlling mechanism being arranged to be set in operation automatically by impact of bullets against said target devices, but only when all of said target devices have been hit.

3. Target apparatus comprising, in combination, a plurality of targets, electrical means for illuminating the front of each target, electrical illuminating means behind each target, a normally closed feed circuit supplying all the front illuminating means, a controller device operable to open said circuit, a circuit for said controller normally open at as many gaps as there are targets in use, an electrical device for each target operable to close the corresponding gap in the controller circuit, a normally open operating circuit for each said device, and a backstop for each target movable by bullet impact to close the corresponding operating circuit and thereby to operate the device and close the corresponding gap, the arrangement being such that when all the gaps are closed, said controller is energized and opens said feed circuit.

4. Target apparatus comprising, in combination, a plurality of targets, an electric light in front of each target, an electric light behind each target, suitable circuits for said lights, a backstop for each target, a dash-pot circuit-controller controlling the front light circuit, a solenoid capable, when energized, of actuating said circuit-controller, a circuit closer for each target normally open but operable to close a gap in the solenoid circuit, and electrical connections between the respective circuit closers and backstops, whereby impact of a bullet with a backstop actuates the corresponding circuit closer and closes the gap controlled thereby, the organization being such that when the solenoid circuit is closed, the circuit-controller is actuated to reduce the illumination afforded by the front lights.

5. Target apparatus comprising, in combination, a plurality of targets, an electric light in front of each target, an electric light behind each target, suitable circuits

for said lights, a backstop for each target, a dash-pot circuit controller controlling the front light circuit, a solenoid capable, when energized, of actuating said circuit-controller, a circuit closer for each target normally open but operable to close a gap in the solenoid circuit, electrical connections between the respective circuit closers and backstops, whereby impact of a bullet with a backstop actuates the corresponding circuit closer and closes the gap controlled thereby, the organization being such that when the solenoid circuit is closed, the circuit controller is actuated to reduce the illumination afforded by the front lights, said circuit controller being arranged to return the circuit closers to open position, thereby breaking the solenoid circuit, and to restore the illumination of the front lights to normal.

6. Target apparatus comprising, in combination, a plurality of target devices, electric lights adjacent the front and rear of each target proper, a backstop to the rear of each target, a controller device operable, when actuated, to turn the front lights off and then on again after a suitable interval, a normally open operating circuit for said controller device, and means operable by bullet impact on the backstops to close said operating circuit, the arrangement being such that the operating circuit is not completed until all the targets have been shot.

7. Target apparatus comprising, in combination, a plurality of target devices, electric lights adjacent the front and rear of each target proper, a backstop to the rear of each target, a light farther in front of the targets, a controller device operable, when actuated, to turn the adjacent front lights off and to turn on the said light farther in front, and then after a suitable interval to restore the lights to their original condition, a normally open operating circuit for said controller device, and means operable by bullet impact on the backstops to close said operating circuit, the arrangement being such that the operating circuit is not completed until all the targets have been shot.

8. Target apparatus comprising, in combination, a plurality of illuminated self-spotting target devices, controller mechanism arranged, when actuated, to operate said target devices through a complete cycle from shooting phase to spotting phase, and back again to shooting phase, and electrical circuit connections between said target devices and said controller mechanism whereby said controller mechanism is actuated by bullets striking the target devices.

9. Target apparatus comprising, in combination, a plurality of illuminated self-

spotting target devices, controller mechanism arranged, when actuated, to operate each target device through a complete cycle from shooting phase to spotting phase, and back again to shooting phase, and electrical circuit connections between said target devices and said controller mechanism whereby said controller mechanism is actuated by impact of bullets on said targets, the arrangement being such that said controller mechanism is not actuated until all of said target devices have been shot.

10. Target apparatus comprising, in combination, a plurality of targets, electric lighting means for said targets, controller mechanism operable to vary the illumination afforded by said lighting means, a circuit for energizing said controller mechanism, relay devices, one for each target, which are normally on open circuit and whose movable cores normally maintain the controller circuit open at a corresponding number of points or gaps, detent means normally holding said cores in the position specified, a normally open circuit arranged to be closed by impact of a bullet on said target, an electromagnetic trip in the last named circuit arranged, when energized, to release the movable core of the corresponding relay and close the gap controlled thereby, a circuit closer operable by said controller mechanism for momentarily energizing said relay devices and resetting the relays to open the controller circuit, and means associated with said controller for maintaining the trip circuits open while said controller mechanism is operated.

11. Target apparatus comprising, in combination, a plurality of targets, an electric light arranged to illuminate each target, a circuit for said lights, a controller operable to alter said circuit and thereby to modify the illumination, a normally open operating circuit for the controller, circuit-closing devices arranged when suitably actuated to close said operating circuit and thereby to set said controller in operation, circuit connections from said devices to the targets whereby said devices are actuated by bullet impact, and electrically distinct sources of current for the lighting circuit and the circuit-closing devices.

12. Target apparatus comprising, in combination, a target device, means normally illuminating the front of the target device, electrical controller means operable automatically, when suitably energized, first to reduce the illumination of the front of the target, and then after a period of delay to restore said illumination to normal, electrical connections between said controller means and said target device, and means operable by impact of a bullet striking said target device to close a normally open gap



in said electrical connections and thereby to energize said controller means.

13. Target apparatus comprising, in combination, supporting means for a cardboard or similar target, an incandescent lamp arranged to illuminate the front of such target, a second incandescent lamp arranged to illuminate the rear of such target, circuits for said lamps, a movable backstop behind the target-supporting means, a normally open circuit arranged to be closed by impact of a bullet with said backstop, and circuit controlling means automatically operable upon closing of said circuit to reduce the illumination afforded by the first named lamp and then to restore said illumination to normal after a suitable interval.

14. Target apparatus comprising a target, front and rear lights for illuminating said target, a backstop behind said target, circuits for said lights, a dash-pot device having a plunger movable rapidly to open the front light circuit and arranged to return slowly to its original position and to close said circuit again, a solenoid arranged, when energized, to move said plunger rapidly as specified, and a normally open energizing circuit for said solenoid, said energizing circuit being arranged to be closed by impact of a bullet against said backstop.

15. Target apparatus comprising a target, front and rear lights for illuminating said target, circuits for said lights, means operable by impact of a bullet striking the target first to open the front light circuit and then to close it again, and means for delaying the circuit-closing operation.

16. A self-spotting target device comprising a perforable target illuminated at front and rear, in combination with means arranged at the rear of said target and operable by bullet impact to diminish the front

illumination of the target and then to restore it to normal after a suitable period of time has elapsed.

17. A self-spotting target device comprising a perforable target, illuminating means arranged, upon suitable actuation, to spot shots through said target, and means operable by impact of a bullet passing through said target first to actuate said illuminating means to spot the shot for a suitable definite period of time, and then to restore said illuminating means to its normal condition.

18. A self-spotting target device comprising an illuminated target in combination with means arranged to receive the impact of a bullet which strikes the target, said means being operable by such impact to vary the target illumination first through a spotting phase of suitable duration, and then back to normal or shooting phase.

19. Target apparatus comprising, in combination, a plurality of targets, means for illuminating the front of each target, means operable by bullet impact to reduce the illuminating of each target, and means capable of operating such illumination-reducing means only after a predetermined number of targets have been shot.

20. Target apparatus comprising, in combination, a plurality of target devices, illuminating means for each target device, and controlling mechanism operable to modify the illumination afforded by said illuminating means, said controlling mechanism being arranged to be set in operation automatically by impact of bullets against said target devices, but only when a predetermined number of said target devices have been hit.

In testimony whereof I hereunto affix my signature.

DAVID ROSS MCGREGOR.

Sept. 7, 1926.

1,598,711

F. R. CHESTER

GAME

Filed Dec. 8, 1922

3 Sheets-Sheet 1

Fig. 1.

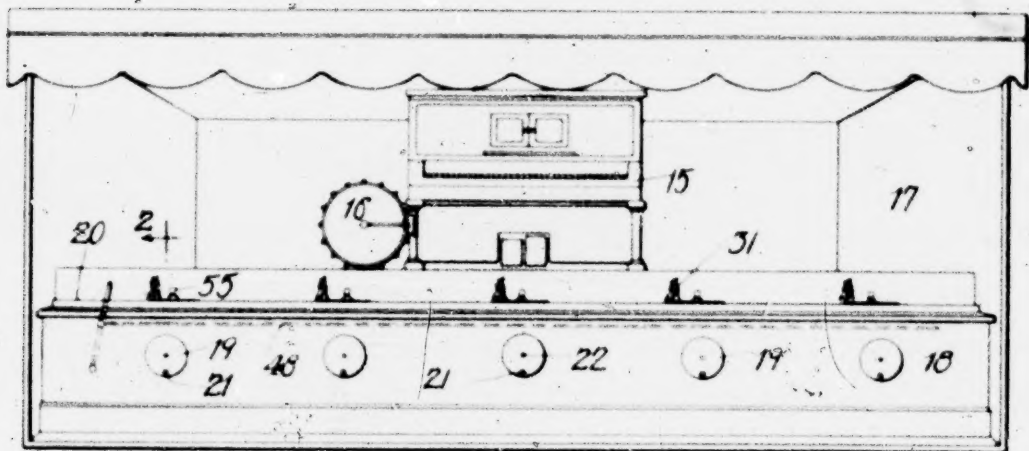


Fig. 2.

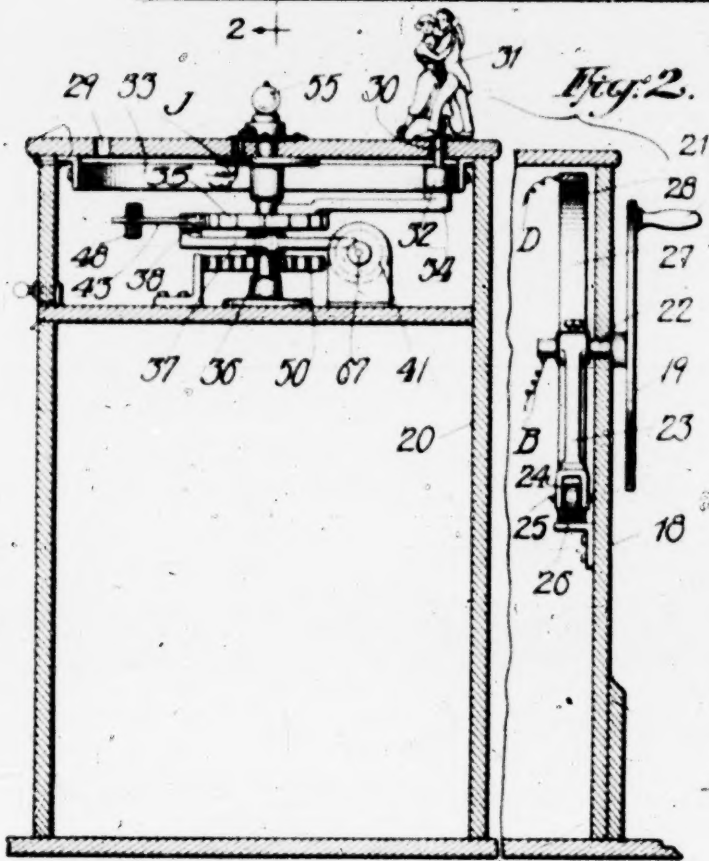


Fig. 3.

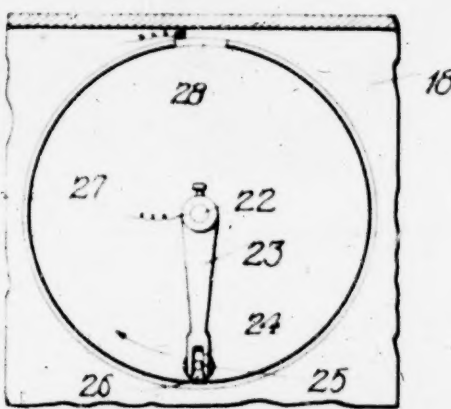


Fig. 4.



Fig. 5.

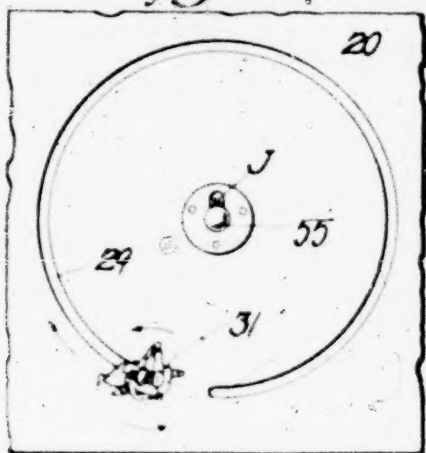
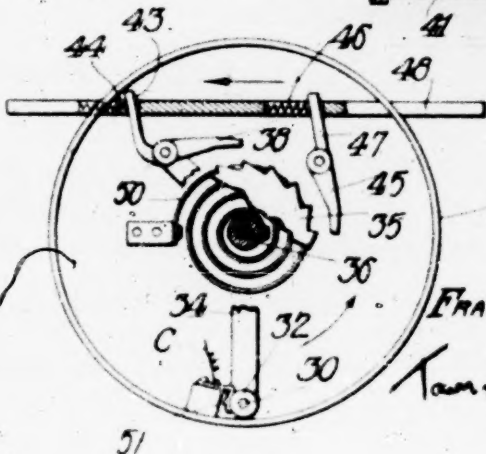


Fig. 6.



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Attorney



**Sept. 7, 1926.**

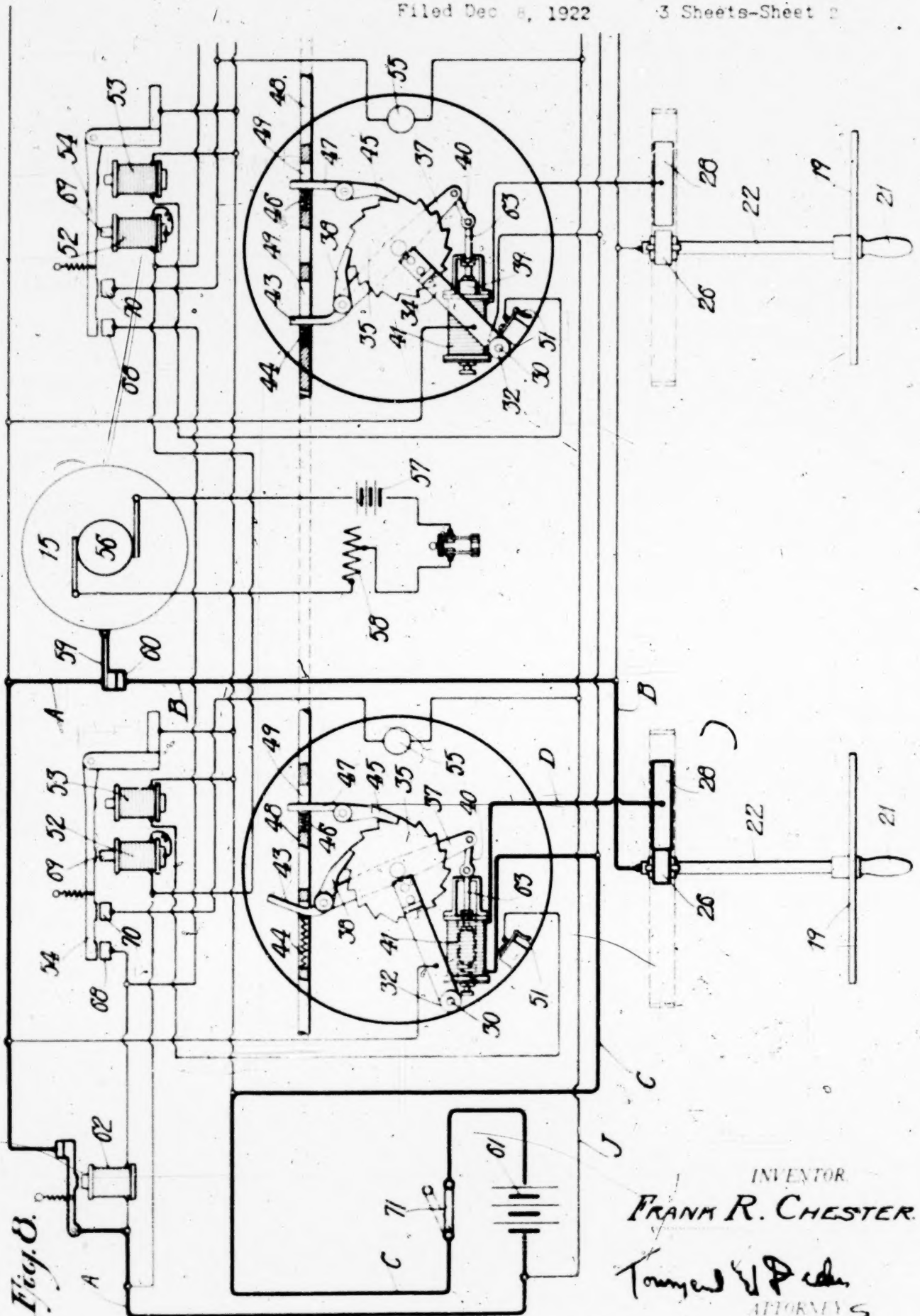
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Sept. 7, 1926.

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Fig. 10.

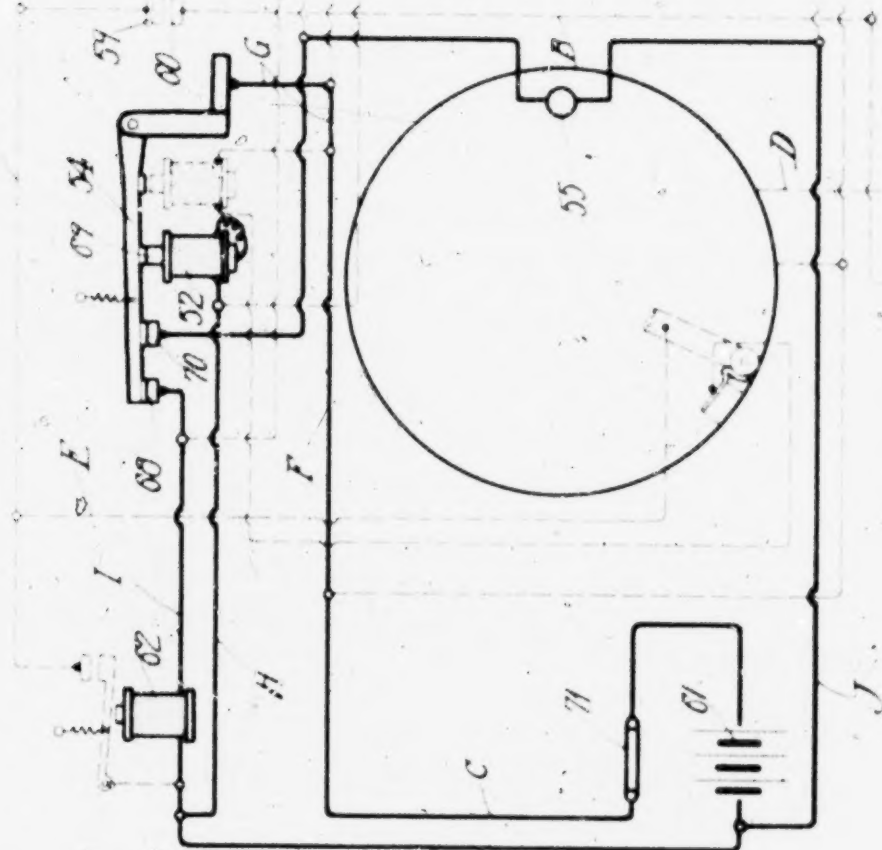
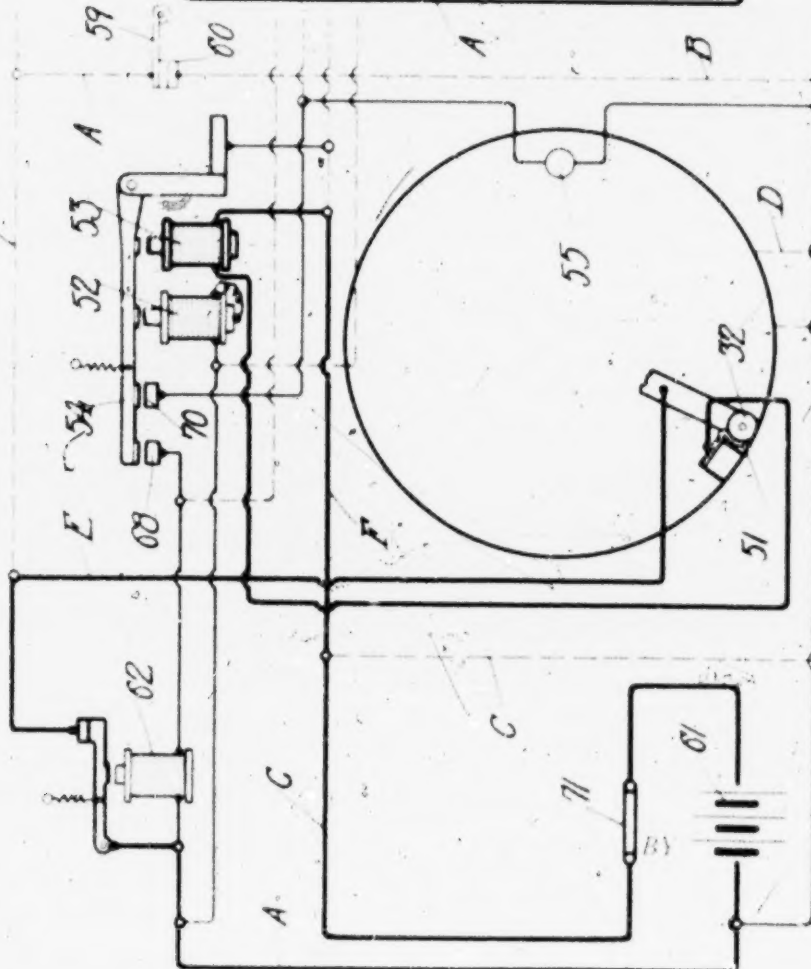


Fig. 9.



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## UNITED STATES PATENT OFFICE.

FRANK R. CHESTER, OF NEW YORK, N. Y.

## GAME

Application filed December 8, 1922. Serial No. 805,579.

My invention relates to a game and aims to provide certain new and useful improvements in connection with a device of this character and particularly such a game as is utilized for commercial purposes in amusement resorts, although I wish it understood that the present invention is not necessarily limited to use in this connection.

It is a well appreciated fact that a great number of games have been constructed which are intended for commercial use in amusement resorts. These games have been designed in great variety and the successful participant in the game has won, according to the type of game, either by skill, chance, or a combination of skill and chance.

Certain difficulties have arisen however, in connection with the various classes of games now upon the market in that, for example, after having played the same for a number of times the public has lost interest therein, due to the fact that a person who has solved the method of operation of the game relying upon skill for its winning, is necessarily, almost invariably, the winner of a game of this type when operating the same in competition with relatively inexperienced participants. Also, where the game relies for its solution upon the element of chance the participants have usually become apathetic to the same after playing the game a number of times.

Thus concessionaires or persons owning games of this nature and operating them commercially at amusement parks, etc., have offered objections to this phase of the same and further objections have been noted incident to the fact that in certain types of games of the general character aforementioned, it has often occurred that two or more units operated by different persons, have been tied and it has hence been necessary to declare all of these parties as winners and to award prizes accordingly which has resulted in a financial loss to the parties exploiting the game. Also, in certain instances mechanical difficulties have arisen in connection with the operation of the games in that these games necessarily receive rather rough usage and thus, if the same are at all delicately constructed objections are bound to arise in this connection.

With these and further difficulties in mind my present invention has reference to a game which is generally classifiable as a game of skill but which, contrary to games

ordinarily embraced in this class depends, for its successful operation, upon the rapid reaction and nervous control of the participant in that, in the present embodiment of the invention it will be necessary for him to co-ordinate, as rapidly and perfectly as possible, the sense of hearing and muscular action directed thereby. Thus my invention, although being primarily intended for amusement purposes also provides a psychological test.

From the foregoing it will be understood that a game of this nature is extremely fascinating in use and will be equally interesting to persons of widely varying intellect and mentality and further that a device of this character will cause the players of the game to desire to repeatedly participate in the same.

This is to be attributed to the fact that no amount of skill will enable the person to repeatedly win the game due to the fact that the successful operation of the same is entirely dependent upon the reaction of one sense to an impression received by another sense and it will be impractical for a player to endeavor to lay out a fixed program of action prior to the commencing of the game in that, as will hereafter be brought out, the schedule under which one of the senses receives its impression is being constantly varied thus making a previously mapped out plan of action wholly impractical.

Furthermore, it is an object of the present invention to provide a game which will be perfect in operation in comparison to games as now placed upon the market, in that the mechanism utilized is extremely simple and positive in operation, so that all objections in this connection are avoided.

A still further object of my present invention is to furnish a device of the character stated in which certain mechanism is provided which renders the occurrence of ties (i. e., there being more than one winner in the game) almost impossible so that the difficulties with regard to this point are also avoided.

With these and further objects in mind the present invention embraces essentially one or more units which, include a mechanism which will transmit impressions to one of the human senses as well as a secondary mechanism by means of which the reactions of the second sense or muscular action to the impressions received by the first sense may



be registered; the winning of the game being dependent upon the speed at which this reaction occurs.

Reference is had to the attached sheets and drawings which illustrate one practical embodiment of my invention and it will be seen in these drawings that:

Fig. 1 is a front elevation of a game embodying my improved construction.

Fig. 2 is an enlarged transverse view of one of the units of the game taken along the lines 2, 2 and in the direction of the arrows indicated in Fig. 1.

Fig. 3 is an inner face view of one part of the mechanism controlled by the participant.

Fig. 4 is an enlarged fragmentary view of a portion of the mechanism illustrated in the preceding view.

Fig. 5 is a fragmentary plan view of the visual portion of the registering mechanism utilized in the present embodiment of the invention.

Fig. 6 is a fragmentary plan view of a second portion of this registering mechanism.

Fig. 7 is an enlarged sectional view of a portion of the operating elements of the said mechanism.

Fig. 8 is a plan view showing the entire mechanism of the game diagrammatically and indicating the circuits, which in the present embodiment of the invention, are relied upon to produce the result desired, it being noted that the circuit which is depended upon to operate the mechanism, according to the position of the parts in this figure, has been indicated in heavy lines and.

Figs. 9 and 10 are views corresponding to Fig. 8, indicating in heavy lines those circuits which are active during the usual and latter stages of the game-operation and the final stage thereof, respectively.

According to the invention as depicted in this application each of the units of the game embraces two groups of mechanisms, one of which is intended to transmit impressions to the sense of hearing of the player, while the second of the same is adapted to be actuated by the said player who is operating the unit.

Thus I have illustrated the game as including a number of units and a single mechanically operated piano or organ, which latter is common to all of the units and embraces the first group of mechanism, while a hand-wheel provides an element in the nature of a baton which forms a part of the second group of mechanism of each unit.

Connected with the hand-wheel of each unit there is mechanism which serves first to register the results achieved by the person operating the unit and second to actuate the mechanism forming a part of thereof, which latter mechanism will serve, if the

unit is properly operated, to indicate that the person actuating the same is the winner of the game.

Referring to the drawings and particularly the first sheet thereof, it will be noted that the reference numeral 15 indicates the organ or piano utilized, which in the present embodiment is provided with a drum or similar percussion device 16 registering the beats of the music. The entire game may be housed in a booth 17 and at the front of the booth there is a counter 18 from which hand-wheels 19 extend, one of these hand-wheels being furnished for each unit. To the rear of this counter there is preferably provided an area-way for the accommodation of the operator or owner of the game and to the rear of this passage there is in turn provided a second counter 20 which serves to mount the visual registering mechanism of the game and to enclose the operating parts of the said mechanism.

It will be noted, reference being had to Figure 2, that each of the hand-wheels 19 carries a crank 21 which may be gripped by the person actuating the unit. A shaft 22 carries the hand-wheel 19 and extends rotatably within the counter 18 at which point there is affixed to it an arm 23. This arm is provided with a forked or slotted outer end 24 as in Figs. 3 and 4 and slidably mounted within this slot are the pintles 25 of a roller 26. Concentrically disposed with respect to the shaft 22 is a band 27 preferably formed of insulating material and a contact segment 28 is arranged within a gap in the inner face of this band at the upper part thereof so as to form a continuation of the same.

It will now be seen, referring particularly to Fig. 2, that the deck of the counter 20 is formed with a circular slot 29 and extending through this slot is a shaft 30 to the upper end of which there may be attached figures 31 simulating a pair of dancers. Carried at the opposite end of the shaft is a roller 32 which bears against the inner face of a hoop 33 arranged within the counter 20. An arm 34 rotatably supports the shaft 30 and this arm is affixed to a ratchet disk 35 rotatably encircling a shaft 36. Fulcrumed upon this shaft as in Figure 8, is a lever 37 and carried by the lever is a pawl 38 which latter engages with the teeth of the ratchet 35, so that when the lever 37 is properly moved the pawl will feed the ratchet step by step around the shaft 36.

With a view to securing such a movement on the part of the lever 37, I prefer to employ an armature 39 which is connected by means of a link 40 with that end of the lever 37 opposite to the end at which the pawl is carried. Arranged adjacent to, or encircling the armature is a solenoid 41 and a spring 42 may be provided to bear against

the armature to normally project the same to the position shown in the right-hand side of Fig. 8.

A proper engagement between the pawl 38 and teeth of the ratchet may at all times be assured by extending the rear end of the ratchet beyond its point of pivotal support, as has been indicated at 43, and utilizing a spring 44 which bears against this extended portion to achieve the result desired. In order to permit the pawl 38 to advance the ratchet 35 in the manner desired, a holding pawl 45 may be employed which similarly to the pawl 38 also has a spring 46 properly bearing against the portion 47 of its body which extends beyond its point of pivotal support. A release of both of these pawls may be secured by utilizing a bar 48 formed with openings 49 through which their extended portions 43 and 47 project and this bar may also serve as a mounting for the springs 44 and 46. If it is desired to release the pawls, the bar 48 may be shifted so that the tension of the springs 44 and 46 is relieved and finally the edge of the openings 49 will engage the extended portions of these pawls and deliberately force the inner ends of the same out of engagement with the teeth of the ratchet so that this latter member together with the arm 34 carried thereby, will be returned to its normal position by means of a spring 50, which has its body coiled around the shaft 36 and has one of its ends secured to a fixed portion of the same apparatus while its opposite end is connected with the ratchet 35. Thus upon the pawls being moved to the position shown in Figure 6 the ratchet will rotate around the shaft 36 and again resume its normal position.

Referring now to Figure 8 it will be noted that a contact plate 51 is arranged within the path of travel of the roller 32 and at the approximate limit of the movement of the same. Furthermore, it will be noted that I provide for each unit a pair of solenoids 52 and 53 respectively which co-operate with an armature 54 common to both of them and it will also be seen that I preferably provide a light 55 above the counter 20.

Now referring to the circuit depicted in Fig. 8 and the method of wiring the units, it will be noted, referring primarily to the first group of mechanism, i. e., in the present instance the mechanically operated piano or organ which is common to all units, that the motor thereof has been indicated by the reference numeral 56 and that a source of current-supply 57 is connected with this motor and serves to operate the same. I may interpose within this circuit a variable resistance 58 by means of which the speed at which the acoustical device 15 operates may be varied. Connected with the movable portion of the percussion device 16 and adapted

to operate synchronously with the same is a movable contact member 59 which co-operates with a contact 60, it being noted that leads A and B are connected with these two elements so that any flow of current passing through the same will be interrupted each time the member 59 moves out of engagement with the contact member 60.

Referring to the wiring circuits of the secondary group of mechanism of each unit it will be noted that in the present instance the lead B, afore-referred to, is connected to the arm 23 while the lead A extends to a source of current-supply 61 and is interrupted by the arm of a conventional circuit-breaker 62. A lead C also extends from the source of current-supply 61 and has its end connected with one of the ends of the winding of a solenoid 41 and a further lead D is connected with the opposite end of these windings and also with the contact segment 28.

Thus it will be understood that in order to complete the circuit through the solenoid it is necessary to bring the roller 26 into engagement with the segment 28 during the time in which the arm 59 is in engagement with the contact member 60, in fact, if the engagement between the roller and segment occurs before or after the arm 59 and contact point 60 are engaged the circuit can not possibly be closed and consequently the solenoid will not be energized. If, however, the engagement between the roller and segment are effected at the proper time this will cause the armature 39 to be retracted by the solenoid from the position shown at the right hand side of Figure 8 to the position shown at the left hand side of this figure, this retraction occurring against the pushing tendency of the spring 42 and in this connection it is to be noted that the latter, immediately upon the current ceasing to flow through the solenoid, will again push the armature to the position indicated. Thus upon each energization of the solenoid the pawl 38 will, by means of the arm 37, advance the ratchet one tooth and this advance will be retained by means of the pawl 45. The last named pawl will now hold the ratchet while the arm 37 and pawl 38 are returned to their normal position by means of the spring 42.

At this time attention is invited to Fig. 7 in which it will be noted, that the connection between the link 40 and the armature is preferably supplied by tapping the armature and forming the rod 63, which connects the armature with the link, with screw threads. These parts may be locked in position by means of a nut 64 and additional nuts 65 are conveniently mounted upon the rod 63 and serve as a stop acting in co-operation with the arbor 66 to thus limit the outward movement of the armature. Furthermore, a set



screw is preferably situated to co-operate with the inner end of the armature and this member limits the movement of the same in an inward direction, it being apparent from the foregoing construction that the parts may be assembled and that subsequently adjustments may be made with that degree of nicety which will insure proper movement on the part of the armature and consequently the desired co-operation of the pawl and the ratchet mechanisms.

Now assuming that the solenoid is energized a sufficient number of times to move the arm 34 from the position shown in Figure 8 to that indicated in Figure 9. It will be appreciated that a circuit will be closed through the roller 32 and the contact member 51. This circuit embraces the source of current-supply 61 as well as the leads A and C extending therefrom and it will be noted reference being had particularly to Figure 9 that these leads have the ends of branch leads E and F connected with their bodies, the continuation of the leads A and B beyond these points of connection having been indicated in dash lines in Figure 9. The leads E and F are also connected respectively with the inner and outer ends of the windings of the solenoid 53 and thus instantly upon a contact having been established between the roller 32 and the member 51, to complete the circuit shown in Figure 9, the armature 54 will be attracted and the parts will be caused to operate to establish the circuit shown in Figure 10.

In this figure it will be noted that the lead F has connected with its body the lead G which is in turn connected with the armature 54. Leads H and I are connected with the lead A and arranged in series with the lead I is the solenoid of the circuit-breaker 62 and the end of this lead is connected with the contact point 68, while the lead H is directly connected with one end of the windings of the solenoid 52.

Thus one circuit will be closed through the source of current-supply 61, the lead A, the lead I contact-point 68, the armature 54, the leads G and F and finally the lead C. A second circuit will also be closed through the source of current-supply, the lead A, the lead H, the windings of the solenoid 52 through the contact stem 69 thereof to the armature 54 and through the leads G, F and C. The final circuit will be closed, when the parts are in the position shown in Figure 10, through the lead J which is connected with the body of the lead A and extends through to the contact-plate 70 lying below the armature 54, it being noted that the said lead J has arranged in series with it the bulb or light 55.

In other words in the example of the invention illustrated in Figure 8 we have the operator of the game endeavoring to

close one circuit. In Figure 9 we have exemplified this circuit as having been closed a sufficient number of times to bring the roller 32 into engagement with the contact 51 thus completing the circuit i. e., the one through the solenoid 53 and finally in Figure 10 there is shown the instantaneous consequence of the closing of the circuit mentioned in connection with Figure 9, it being noted in Figure 10 that three distinct circuits are shown as closed. These circuits include, first, the one through the circuit-breaker 62, secondly the one through the solenoid 52 and finally the one through the light 55 or other signal utilized.

In operating the game it will be understood that a number of players arrange themselves before the counter 18 and each of them grasps the crank 21 of one of the hand wheels 19. Until this time the switch 71 is preferably left open so that all of the secondary mechanism of each unit is rendered inoperative. However, due to the fact that the acoustical device is on another circuit, this member will continue to function. When the players are in readiness, the switch 71 may be closed to render all of the circuits operative and the object of the game is to utilize the crank 21 as a baton to keep in time with the beat of the music as exemplified by the percussion device 16. Although the beat of the music may be regular, I prefer to provide a music roll or record which is so cut or arranged as to play a medley, or in other words which when played will vary for example, from 2/4 to 4/4 time to 3/4 time etc., etc. These changes in time may be abrupt or may merge into one another as is found most practical and the time beats may further be varied by means of the resistance 58 provided for this purpose it being of course understood that if it is found desirable all changes in time may be accomplished by means of either operating this part, or by constructing the record to accomplish this result.

Thus it will be obvious that difficulty will be experienced on the part of the players in endeavoring to operate the cranks in such a manner as to keep in time with the music and particularly due to the fact that I propose employing a record of such a length that it will be virtually impossible for a person to memorize the same together with all variations in time-beat produced thereby. It will hence be necessary for each player, in the type of apparatus illustrated in the present application to bring the baton i. e., the crank to its lowermost position at the time when the beat occurs and if he does so the circuit described in connection with Figure 8 will be completed thus energizing the solenoid 41 and securing an advance of the ratchet 35.

This advance will be registered due to

the fact that the roller 32 is bearing against the inner face of the band 33 and the shaft 30 carried by this roller mounts the figures 31. Thus upon the arm 34 being moved, the roller will revolve and the figures will accordingly move and for the reason that these figures are in full view of the operator he will immediately become aware that he has properly operated the crank.

If on the other hand he fails to bring the roller 26 to a point at which it will contact with the plate 28, in that interval during which the arm 59 rests upon the contact member 60 it will be apparent that no advance of the ratchet 35 will occur and accordingly the figures 31 will not revolve upon themselves nor around the shaft 36 and consequently the player will be made aware that he has not operated the mechanism in synchronism with the beat of the organ or piano.

The possibility of fraud in this connection is avoided due to the slot 24 provided by the forked end-portion of the arm 23; in that, should the player attempt to win the game by simply holding the hand-wheel in such a position that the outer end of the arm 23 will lie adjacent to the segment 28, it will be noted that no contact can occur due to the fact that the roller will move to the position indicated in dot and dash lines in Figure 4, it being necessary to rotate the arm 23 at ample speed to provide sufficient centrifugal force to throw the roller into contact with the segment 28 as has been indicated in full lines in Figure 4.

The various players of the game, operating in competition with one another will now endeavor to actuate the cranks in synchronism with the beat of the music, their object being, to register the greatest amount of correct beats in the shortest interval of time and it will be apparent that as they have completed the game the correctness or incorrectness of the results achieved by each individual player will be accurately registered by means of the figures 31. Upon one of the units having been operated correctly a sufficient number of times to bring the parts thereof to the position shown in Figure 9 it will be obvious that the circuit indicated in this figure will be completed first and this will result in the immediate establishment of the further circuits shown in Figure 10 and the interruption of the circuit described in connection with Figure 9.

By virtue of the further and final registering means provided by the light 55 the players will become aware that this particular unit has been operated with the greatest degree of correctness in the shortest interval of time and the possibility of a tie occurring between two units is almost entirely precluded in that, even if two units had been operated in such a manner that it

required but the further advancement of one tooth on the part of the ratchets 35 to bring the mechanism of these units to their final positions and further, even if both operators of the units brought the rollers 26 to bear against the contact segment 28 thereof, during that interval of time in which the member 59 was engaging the contact-plate 60, as long as the engagement between the rollers 26 and segment 28 of the different units was more than approximately 1/200 of a second apart the circuit-breaker 62 would operate to thus disconnect the circuits of all of the other units and to prevent any further actuation of the same.

After the winner of the game has been declared, a return of all of the mechanism to its initial position may be secured by simply moving the bar 48 to throw the pawls 38 and 45 out of engagement with the teeth of the ratchet 35 thus allowing the springs 50 co-operating with the same to return the ratchets as well as the arms 34 to their initial positions.

From the foregoing it will be understood that all of the objects of this invention have been accomplished and it will furthermore be appreciated that, although I have shown but one form of my invention in the present application, numerous forms of the same might readily be resorted to and also that, although for the sake of simplicity I have herewith illustrated an electrical control for causing the operation of the mechanism, any desirable form of control might be utilized and that numerous structural variations might be resorted to without in the least departing from the spirit of my invention as defined by the appended claims:

What I claim as my invention is:-

1. A game, including, in combination, means for producing a beat, a number of competitive units, means individual to each of said units for manually operating the same in registry with said beat, and means for indicating the correctness of such registry.

2. A game, including, in combination, means for producing a beat, a number of competitive units, means individual to each of said units for manually operating the same in registry with said beat, and means for indicating the failure of such registry.

3. A game, including, in combination, means for producing a beat, a number of competitive units, means individual to each of said units for manually operating the same in registry with said beat, means for indicating the correctness and failure of such registry, signalling means, and means connected with said units for actuating said signalling means and adapted to operate upon the manually-operated means of one of said units having correctly actuated a certain number of times.

4. A game, including, in combination, means for rendering a musical selection, a plurality of competitive units, manually-actuated means associated with each of said units for actuating the same and to be operated in time with the beat of such rendition, and means for indicating that unit which has been most correctly operated.

5. A game, including, in combination, means for rendering a musical selection, a plurality of competitive units, manually-actuated means for operating said units in time with the beat of such rendition, means for registering the correctness or incorrectness of such actuation, and signalling means associated with said units and to be operated upon one of the same having been correctly actuated a number of times.

6. A game, including, in combination, means for producing a beat, a plurality of competitive units, manual means for operating each of said units in time with said beat, means actuated by said manual means for progressively indicating the correctness of operation of the latter, and means associated with each of said units and operating upon one of said progressive means reaching a predetermined point.

7. A game, including, in combination, means for producing a beat, a plurality of competitive units, manual means for operating each of said units in time with said beat, means actuated by said manual means for progressively indicating the correctness of operation of the latter, means associated with each of said units and operating upon one of said progressive means reaching a predetermined point, and means for interrupting the further operative progress of the other units upon said last-named means being actuated.

8. A game, including, in combination, means operating to produce an impression upon one of the senses, a number of competitive units, manual means for operating each of said units and to be actuated in substantial synchronism with the impression received by said first-named means, means for indicating the result of such actuation, and means associated with said units to automatically indicate when one of the same has been operated correctly a number of times.

9. A game, including a pawl-and-ratchet mechanism, a bar formed with an opening, an extended portion forming a part of said mechanism and projecting into said opening, means for progressively advancing the parts of said mechanism with respect to each other, and means operated by said mechanism, said bar being movable to discontinue the further operation of said mechanism.

10. A game, including a pawl-and-ratchet mechanism, a bar formed with an opening,

an extended portion forming a part of said mechanism and projecting into said opening, means for progressively advancing the parts of said mechanism with respect to each other, means operated by said mechanism, and a spring associated with said bar and bearing against the extended portion of said mechanism to normally maintain the same in operative condition, said bar being movable to render said mechanism inoperative.

11. A game, including, in combination, means operating to produce an impression upon one of the senses, a plurality of competitive units, each comprising manual means for operating the same, registering means, means connected with both of said last-named means for progressively operating the latter, means whereby said last-named means will be inoperative except when said manual means is actuated in proper response to said impression-producing means, and signalling means actuated upon said registering means being operated a number of times.

12. A game, including, in combination, means operating to produce an impression upon one of the senses, a plurality of competitive units, each comprising manual means for operating the same, registering means, means connected with both of said last-named means for progressively operating the latter, means whereby said last-named means will be inoperative except when said manual means is actuated in proper response to said impression-producing means, signalling means actuated upon said registering means being operated a number of times, and means for rendering the other units inoperative upon the signalling means of one of the same being actuated.

13. A game, including, in combination, means operating to produce an impression upon one of the senses, a plurality of competitive units, each comprising manual means for operating the same, registering means, means connected with both of said last-named means for progressively operating the latter, means whereby said last-named means will be inoperative except when said manual means is actuated in proper response to said impression-producing means, signalling means actuated upon said registering means being operated a number of times, means for rendering the other units inoperative upon the signalling means of one of the same being actuated, and means for returning all of the parts to their initial position.

Signed at New York in the county of New York and State of New York this 6th day of December, A. D. 1922.

FRANK R. CHESTER.



Jan. 1, 1929.

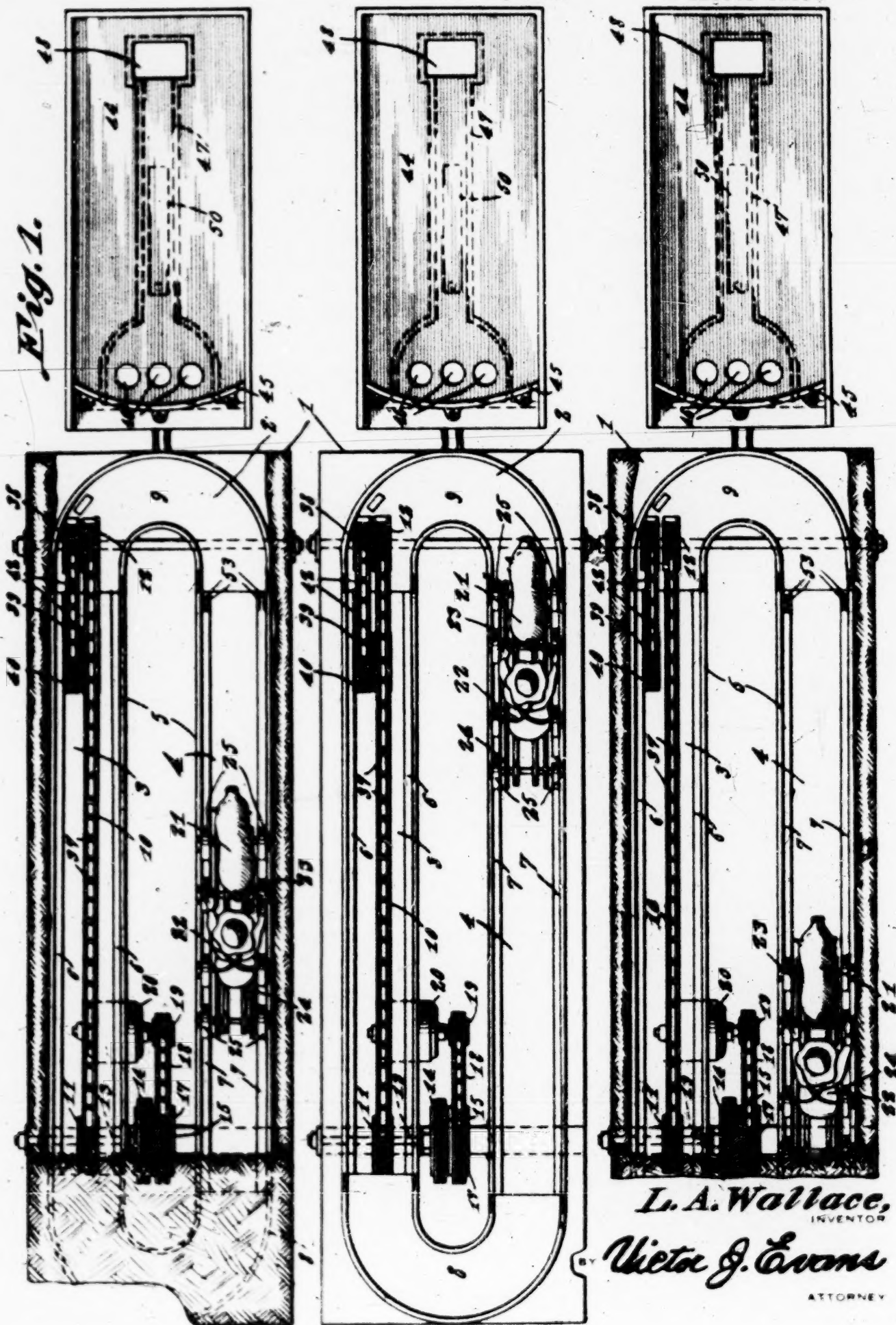
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L. A. WALLACE  
AMUSEMENT APPARATUS

Filed June 16, 1928

4 Sheets-Sheet 1

Fig. 1.



Jan. 1, 1929.

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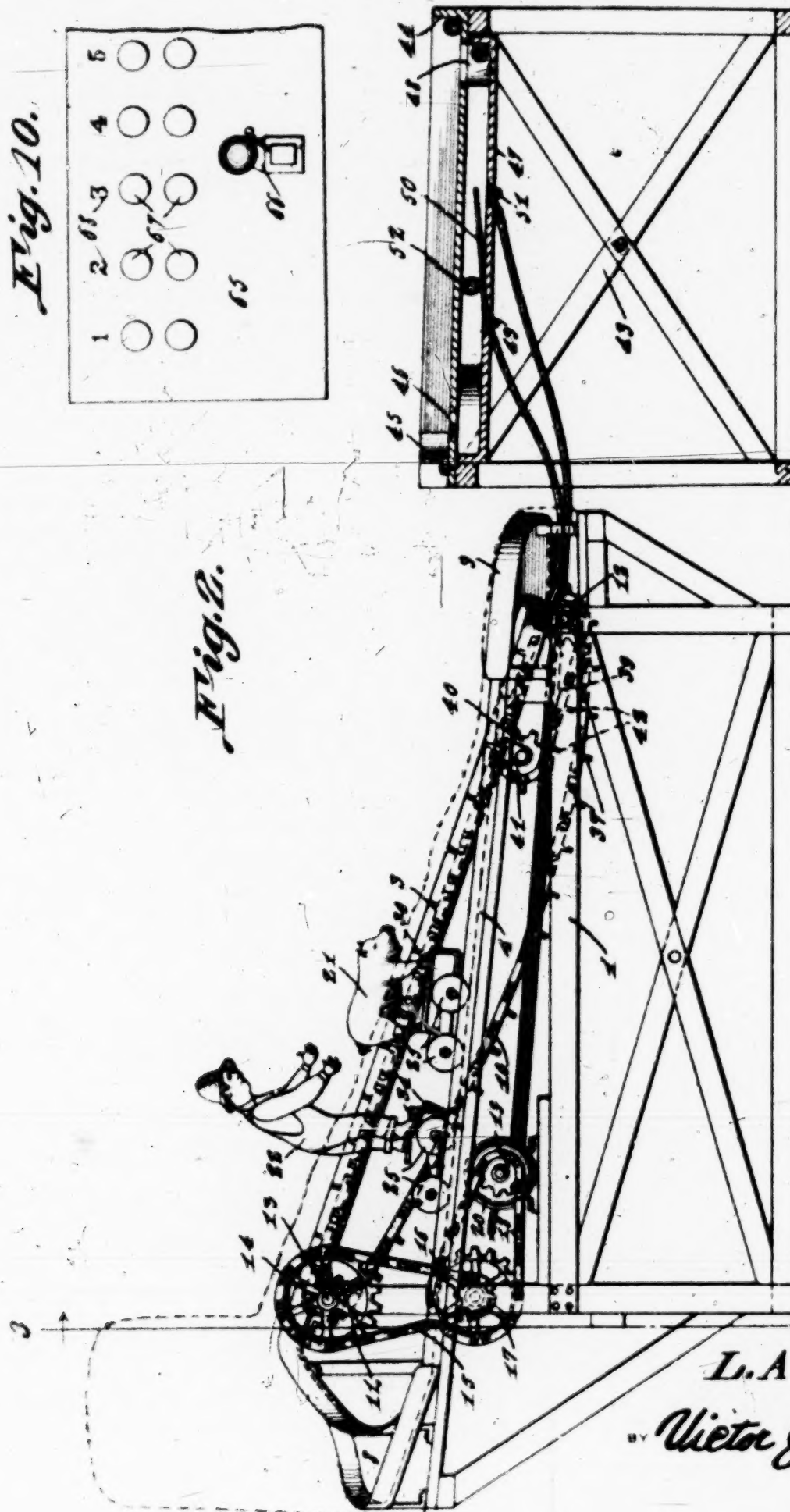
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*Fig. 10.*



*Fig. 2.*



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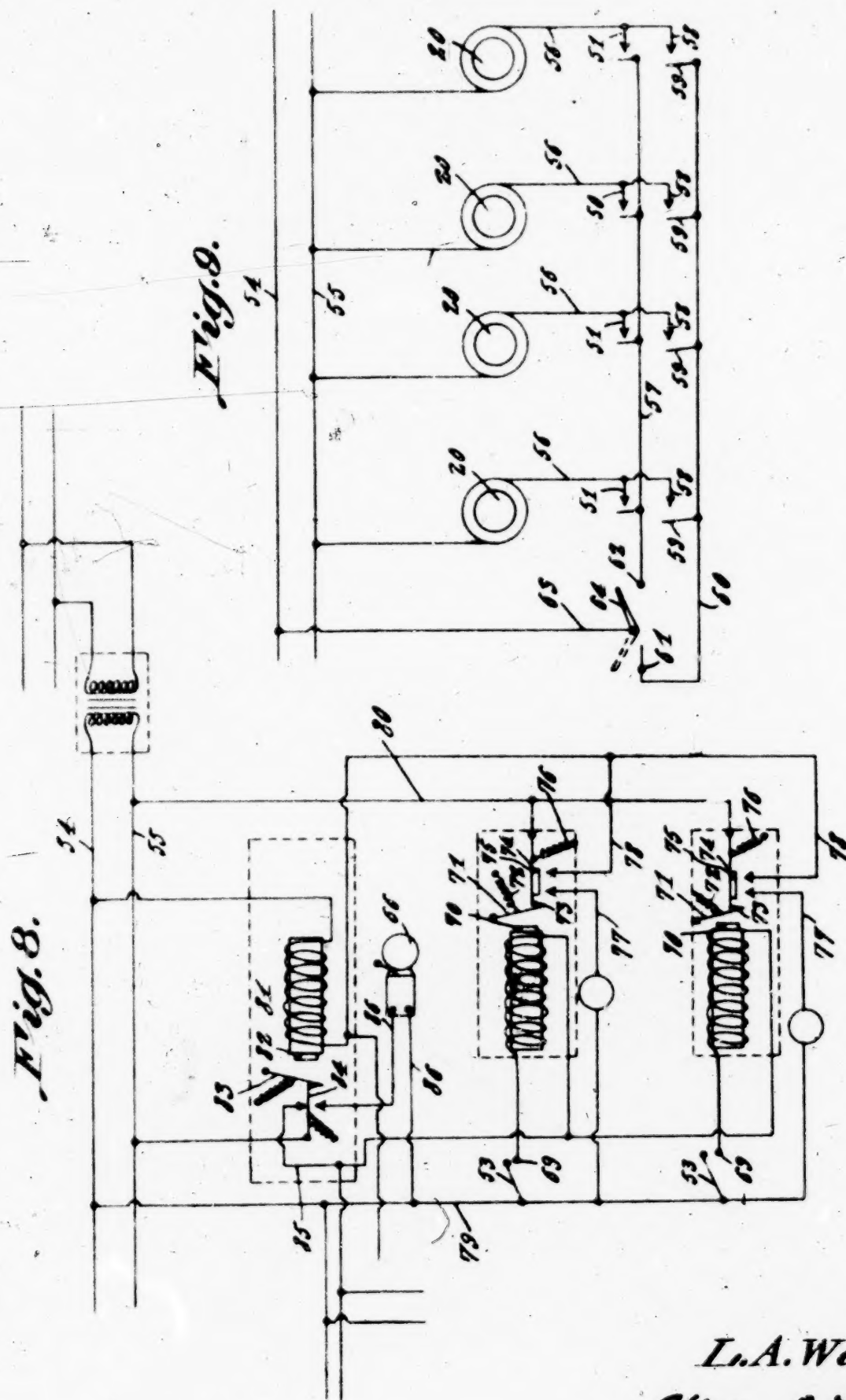
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L. A. WALLACE  
AMUSEMENT APPARATUS

Filed June 16, 1928

4 Sheets-Sheet 4



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Patented Jan. 1, 1929.

1,697,701

# UNITED STATES PATENT OFFICE.

LAWRENCE A. WALLACE, OF SALT LAKE CITY, UTAH

## AMUSEMENT APPARATUS

Application filed June 16, 1928. Serial No. 285,860.

My present invention has reference to an amusement apparatus for parks, fairs, and the like, the primary object of the invention being the provision of a racing game in which animated figures are caused to travel over a track or course and in which the movement of such figures depends upon the rapidity and dexterity of the players.

A further object is the provision of an amusement apparatus in the nature of a race track or course having animated figures providing the racing pieces, the said figures being mechanically moved (by electrically actuated means) over one side or stretch of the course by the players of the game, and directed onto and permit the said playing pieces gravitating downwardly on the other side or stretch of the track or course to reach a goal, and to automatically sound and flash signals to indicate the winner of the game, together with means for bringing the racing pieces to the starting point of the course; the playing of the game creating amusement and mild excitement to the players and spectators and which will also train the eye and exercise the arms of the players.

More specifically the game comprises any desired numbers of race tracks or courses arranged side by side, the sides or stretches of each course being arranged at an upward inclination from the post or starting point for the racing pieces, one of said stretches being disposed at a greater inclination than the other, both of said stretches being connected by rounded ends, the elevated stretch having arranged longitudinally thereon an endless chain provided with upstanding lugs or flights to engage with depending lugs on the playing pieces, the said chain being operated by an electric motor which has a normally open circuit, and which circuit is temporarily closed by weighted balls manipulated by the players so that the motors will be operated to move the chains and the playing pieces engaged thereby a predetermined distance each time the circuit is closed, whereby the playing pieces will be advanced on this stretch of the course and directed onto and permitted to gravitate down the second stretch of the course to reach a goal and to automatically sound and flash signals to indicate the winners of the race, there being means for simultaneously bringing all of the racing pieces to the starting post or point of the courses.

The invention will be fully and comprehensively understood from a consideration

of the following detailed description when read in connection with the accompanying drawings which form part of the application, with the understanding, however, that the improvement is capable of extended application and is not confined to the exact showing of the drawings nor to the precise construction described and, therefore, such changes and modifications may be made therefrom as do not affect the spirit of the invention nor exceed the scope thereof as expressed in the appended claims.

In the drawings:

Figure 1 is a top plan view of the improvement.

Figure 2 is a side elevation with parts in section.

Figure 3 is a transverse sectional view approximately on the line 3-3 of Figure 2.

Figure 4 is a plan view of one of the trucks employed.

Figure 5 is an approximately central vertical longitudinal sectional view there-through, showing the same arranged upon one of the stretches of the course or track.

Figure 6 is a plan view of the second truck employed on each course or track.

Figure 7 is a central vertical longitudinal sectional view therethrough showing the same arranged upon one stretch or side of the track or course.

Figure 8 is a diagrammatic view of the electric circuit for the annunciator and bell.

Figure 9 is a similar view of the circuit for the motors.

Figure 10 is a plan view of the annunciator.

As disclosed by Figure 1 of the drawings, any desired number of tracks or courses and playing boards or tables for such tracks or courses may be employed. As the tracks or courses, the racing pieces and the playing tables are all of a similar construction a detailed description of one may be taken as equally applicable to the remainder.

On a suitable frame 1, there is supported a track or racing course. The racing course is of any desired length and may, of course, be constructed of any desired material. For distinction I will designate the front of the course, which has both the goal and the starting point thereon by the numeral 2. The track or course provides two spaced parallel sides 3 and 4, respectively. Both of these sides have their edges formed with upstanding flanges 5, and in a line with the flanges and on the base or floor of the sides 3 and 4



there are arranged metal plate or strips 6-6 and 7-7 that provide the rails of the tracks. Both of the sides 3 and 4 are arranged at upward inclinations with respect to the front 1 of the improvement, but the elevated end of the side 3 is disposed a suitable distance above the elevated end of the side 4. The sides 3 and 4 have their ends connected by upper and lower rounded plates 8 and 9, respectively, and these plates or ends have their edges flanged, the said flanges being continuous with the flanges 5 of the sides. The rounded upper end 8 is inclined from the upper end of the side 3 to its connection with the elevated end of the side 4 and in a like manner the end 9 of the course has its base inclined or rounded downwardly to its connection with the side 3. The sides 3 and 4 provide the stretch-bes of the track or course and will hereinafter be so called.

The base of the stretch 3 is centrally formed with a longitudinal opening that extends into the end 8. Arranged for travel through this opening there is an endless chain 10. The ends of this chain are trained around upper and lower sprocket wheels 11 and 12, respectively. The shaft 13 for the upper sprocket wheel 11 has fixed thereon a second and larger sprocket wheel 14 around which is trained a downwardly directed endless sprocket chain 15. This chain passes between the confronting flanges 6 and 7 of the stretch-bes 3 and 4, and has its lower end trained around a comparatively small sprocket wheel 16 on whose shaft there is fixed a larger sprocket wheel 17. Around this sprocket wheel 17 there is trained a longitudinally extending sprocket chain 18 which is also trained around a sprocket wheel 19 on the shaft of an electric motor 20. The motor is supported on the top of the frame 1 below the course.

In the showing of the drawings I have disclosed the racing pieces on each course as a figure representing a pig 21 and a figure representing a man 22 who has his arms outstretched as if chasing the pig. Both of the figures 21 and 22 are mounted on wheeled trucks 23 and 24, respectively. The wheels 25 of these trucks are designed to travel on the rails 6-6 and 7-7 in the stretches of the course. The trucks 23 and 24 are approximately of the same length and, of course, of the same width. The truck 23 has the axle for its front wheels 25 provided with two spaced crank portions 26 each arranged in the same direction. On these cranked portions there are journaled rearwardly extending strips 27, the said strips passing between suitable guides 28 on the frame of the truck, and the said strips preferably having their outer ends first bent outwardly and from thence inwardly and longitudinally over the strips 27 as indicated by the numerals 30. The ends of the elevated portions 30 of the strips are bent

downwardly, off-set and bolted, riveted or otherwise secured to the strips 27. The elevated parts 30 of the strips 27 have secured thereon the hook portions or legs 31 of the figure 21. It will be apparent that when the truck 23 with the figure 21 thereon is caused to travel over the rails on the outer side or stretch of the course, and, of course, the turning of the crank shaft imparts a movement thereto to move the said strips upwardly, downwardly, forwardly and backwardly, thus rendering the figure 21 animated and causing the same to simulate a galloping action.

The truck 24 also has its forward axle provided with spaced cranked portions but these cranked portions 32 are disposed in opposite directions. The crank portions have journaled thereon strips 33, similar to the strips 27, the said strips 33 being guided through the frame of the truck and having their outer ends upturned and from thence extended inwardly, as at 34, over the strips 33, and to these elevated portions 34 there are attached the feet 35 of the figure 22. The legs of the figure 22 are pivotally connected with the body thereof, so that the turning of the crank shaft at the front of the truck 24 will impart a movement similar to the movement of the strips 27 on the truck 23, but by arranging the cranked portions 32 of the front axle of the said truck 24 in opposite directions and by mounting the feet 35 on the spaced elevated portions 34 of the strips 33, a running movement will be imparted to the said figure 22.

The trucks 23 and 24, at one or both of the ends thereof, have depending lugs 36. These lugs are so arranged that they will not contact with the floor or base of the stretch 3 or with the lower walls 8 and 9 at the ends of the course but the said lugs are in the path of engagement with up-standing fingers 37 on the upper flight or lead of certain of the spaced links on the chain 10. The fingers 37 are equidistantly spaced.

The shaft for the wheel 12 has fixed thereon a second sprocket wheel 28 around which is trained one end of a comparatively short sprocket chain 39 that is received through a longitudinal opening in the floor or base of the stretch 3, the second end of the said chain 39 being trained around a second sprocket wheel 40 that is fixed on a short shaft whose ends are journaled in depending bearings 41. This short chain 39 has certain of its equidistantly spaced links formed with out-standing fingers 42. The purpose of this arrangement will presently be apparent.

Arranged slightly forward of the lower ends of each of the courses there is supported upon suitable frames 43 flanged tables 44. The bottom of each of these tables is preferably inclined upwardly from its outer to its opposite end and the last mentioned end of

each of the tables has an arched or curved flange 45 connected with the side flanges thereof. The bottom of each table opposite the arched flange 45 is provided with any desired number of equidistantly spaced transversely arranged round openings 46, and these openings communicate with a flanged downwardly inclined runway 47 fixed beneath the bottom of each of the tables 44. The closed ends of the runways 47 communicate each with a substantially rectangular opening 48 in the bottom of each of the tables 44, adjacent to the outer or plain end of the apparatus.

Each motor 20 is in circuit with a suitable source of power, two of the circuit wires of which being directed beneath the respective tables 44, one of these wires being attached by a binding post 49 to a spring circuit maker 50 in each of the runways 47, the second wire being connected by a binding post to a contact 51 that is disposed below the raised end of the flat spring circuit maker 50.

At the starting of the game, the truck bay- ing the figure representing the pig thereon is arranged on the short chain 39 and has its legs contacted by the fingers on the chain, while the figure representing the man is arranged slightly to the rear of the pig figure and has one of the lugs of its track engageable by one of the fingers 37 on the chain 10. The players are allotted any desired number of weighted spheres and standing at the outer end of the tables 44 manipulate or throw the said spheres to cause the same to drop through the openings 46 into the runways 47 and to travel over the circuit makers 50 to cause the same to move against the contacts 51 and thereby energize the motor and impart a longitudinal movement to the chain 10 for the period of time in which the ball or sphere 52 travels over the spring circuit maker 50, or rather as long as the same holds the circuit maker in engagement with the contact 51. The racing figures travel up the steep stretch 3 of the course, and the speed of such travel is determined by the quickness of the throwing or manipulation of the balls or spheres of the several players. When the racing figures have reached the upper or elevated ends of the chain 10 they will, by the contact of the fingers on the chain and the contacts with the lugs on the trucks, be forcibly directed over the downwardly rounded end 8 of the courses and will be permitted to gravitate rapidly down the inclined stretch 4 of the said courses. When the figures reach the goal on the courses, which is at the lower ends of the stretches 4, the wheels of the said trucks will close normally open switches of circuit makers 53 arranged in spaced pairs on the lower ends of the rails 7, bringing such switch members against the contacts and to complete a circuit which will sound an alarm and likewise operate an annunciator or indi-

cator so that the name or number of the winner of the race will appear thereupon. Thus the winner of the race is both visibly and audibly indicated. The manner in which this is accomplished, and the manner in which the racing figures are simultaneously returned to the post or starting points in the several courses will presently be described.

Reference is now to be had to the diagram illustrated by Figure 9 of the drawings. The wires of the main circuit are for distinction indicated by the numerals 54 and 55, the wire 55 having branch wires leading to the respective motors 20, and the wires leading from these motors are provided with the contacts 51 of the normally open circuit makers 50. The wires leading from the motor and provided with the contact 51 are for distinction indicated by the numerals 56, and the wire or conductor having the spring switch or circuit is indicated for distinction by the numeral 57. The wires 56 bridge the wire 57 and have at their ends contacts 58. These contacts are in the path of engagement with normally open spring switches or contact makers 59 connected to a wire 60 that merges into a contact 61, and this contact is disposed opposite a contact 62 in the conductor 57. The numeral 63 designates a branch wire leading from the main circuit wire 54, the same being provided with a manually operated switch 64 that is movable against either of the contacts 61 or 62. When the game is played as above described the switch 64 is swung against the contact 62, and when all of the motors are to be stopped the switch 64 is moved to neutral position. When the racing figures have moved off of the switch or contact makers 53 and gravitated through the rounded front end 9 of the course, one of the lugs on the frame of the truck 23 will contact with the wheels on one side of this truck and depress the switches or circuit makers 59 momentarily to operate the motor so that the short chains 39 will bring their fingers 42 against the lugs on the truck and move the said truck the length of the short chain, and all of the trucks carrying the racing figures on the several courses are moved to starting position by the swinging of the switch 60 into engagement with the contact 61.

The annunciator, indicated by the character 65, and illustrated by Figure 10 of the drawings, carries the bell 66 and pairs of superimposed lamp bulbs 67 which may be colored plain or which may have inscribed thereon the name of the winner of the race, and the said face of the annunciator may have imprinted thereon numerals 68 arranged above the lamp bulbs and designating the several courses.

As disclosed by the diagram in Figure 8 of the drawings, the normally open circuit makers or contacts 53 on the goals of the courses are in the path of engagement with contacts



69 that are wired to relays each of which including the ordinary magnet, the poles of which are indicated by the numeral 70. The armatures for the poles 70 are indicated by the numerals 71, the same being influenced by springs 72 away from the poles. Each of the armatures has a hooked end 73 to engage with a pivotally-supported plate 74 that carries a swinging contact 75. The swinging contacts are each normally influenced by a spring 76 and are movable against contacts on the terminals of wires 77 and 78. Each of the circuit wires or conductors 77 is connected with one of the lamp bulbs 67 in the series on the annunciator and these wires 78 are connected with branch wires 79 to which the inner ends of the normally open switches or circuit makers 53 are connected and which are likewise connected to the main circuit wire 54. The members 74 are connected by wires or conductors 80 to the main circuit wire 55, while wires of the conductors 78 bridge the conductors 80 and are connected with a relay 81, the core of which is indicated by the numeral 82. The armature for the electro magnet 81 of the relay is pivotally supported and spring influenced away from the core of the relay and is indicated by the numeral 83.

This armature has a hooked end to engage with a spring influenced switch 84 to hold the same against a contact or terminal on the end of a wire or conductor 85 that leads to the wiring of the second or lower relay. The switch 84, when attracted by the electro magnet 81, is spring influenced toward a terminal contact on the end of one of the wires 86 for the bell 66, the return wire 86 for the bell being connected to the conductor 79. Thus it will be noted that the winner of each race is signaled by the flashing of lamps wired to the respective open switches or circuit makers 53 in each of the courses and that the bell 66 will be sounded almost simultaneously with the flashing of the lights.

The several courses of the game have their sides and ends suitably covered so that the racing figures may be seen only when the same are traveling upwardly on the stretches 3 and downwardly on the stretches 4, the covering at the ends of the courses being in the nature of tunnels. These coverings are suitably painted or otherwise decorated and the side coverings will hide or obscure the trucks, so that only the figures on the trucks will be observable. While I have illustrated and described the racing figures as representations of pigs and men chasing such pigs, it is obvious that other figure characters may be employed, the main object of using the figures disclosed being to add to the amusement of the players as well as to the amusement of the spectators of the game.

It is believed that the foregoing description, when carefully read in connection with

the accompanying drawings will fully set forth the construction, operation and advantages of my improved racing game so that further detailed description is not thought necessary.

Having described my invention, I claim:

1. A game apparatus comprising race courses arranged side to side and each comprising a race course which includes side stretches and rounded ends, both of the side stretches being inclined from one to its other end but one of said stretches being elevated above the other, an endless chain in the last mentioned stretch, wheeled racing figures to travel around the course, electrically operated means for moving the racing figures onto the endless chain, lugs on said chain to engage with said figures, a motor for operating the endless chain, a normally open electric circuit for the said motor designed to be temporarily closed by weights gravitating thereover whereby to gradually advance the racing figures over the elevated stretch of the chain, to deliver the same onto the raised rounded end of the course and to permit of the said figures gravitating on the second side stretch of the course, and electrically operated means for signalling and audibly announcing the racing figures which first gravitate over the last mentioned course.

2. A game apparatus comprising race courses arranged side to side and each comprising a race course which includes side stretches and rounded ends, both of the side stretches being inclined from one to its other end but one of said stretches being elevated above the other, an endless chain in the last mentioned stretch, wheeled racing figures to travel around the course, electrically operated means for moving the racing figures onto the endless chain, lugs on said chain to engage with said figures, a motor for operating the endless chain, a normally open electric circuit for the said motor designed to be temporarily closed by weights gravitating thereover whereby to gradually advance the racing figures over the elevated stretch of the chain, to deliver the same onto the raised rounded end of the course and to permit of the said figures gravitating on the second side stretch of the course, and electrically operated means for signalling and audibly announcing the racing figures which first gravitate over the last mentioned course, means for rendering the electrically operated means inactive when the racing figures have reached the goal of the track and electrically operated means for returning all of the racing pieces to engagement with the lugs of the chain and in starting position.

3. A game apparatus comprising racing courses which are arranged side by side and each of which includes side stretches and rounded end stretches both of said side stretches being upwardly inclined from one to

its other end but one of said stretches being elevated above the other, an endless chain in the last mentioned stretch having spaced up-  
standing lugs thereon, a track comprising rails in both of the side stretches, a flanged guard surrounding the inner and outer edges of the course, racing figures for traveling over the course, each of which includes a wheeled truck, one of the axes of each of the trucks being cranked, a frame pivotally connected to each of the trucks and having parts connected to the crank portions of the axle, figures mounted on said frames, a motor for operating the endless chain, a normally open circuit for the motor designed to be temporarily closed by weights gravitating thereover, lin-  
gers on the trucks engageable with the lugs of the chain, and wherein the closing of the circuit will cause the upward travel on the elevated stretch of the course and to direct the racing figures onto the upper rounded end of the course to permit of the same gravitating on the lower side stretch of the course, electric means actuated by the racing figures first reaching the lower portion of the last mentioned stretch for actuating an indicator and an alarm to announce the winner of the race, and electrically operated means for bringing all of the racing figures to starting position at the lower end of the endless chain.

In testimony whereof I affix my signature.

LAWRENCE A. WALLACE.

May 15, 1923.

M. HIGUCHI

1,454,968

AMUSEMENT APPARATUS

Filed July 12, 1921

6 Sheets-Sheet 1

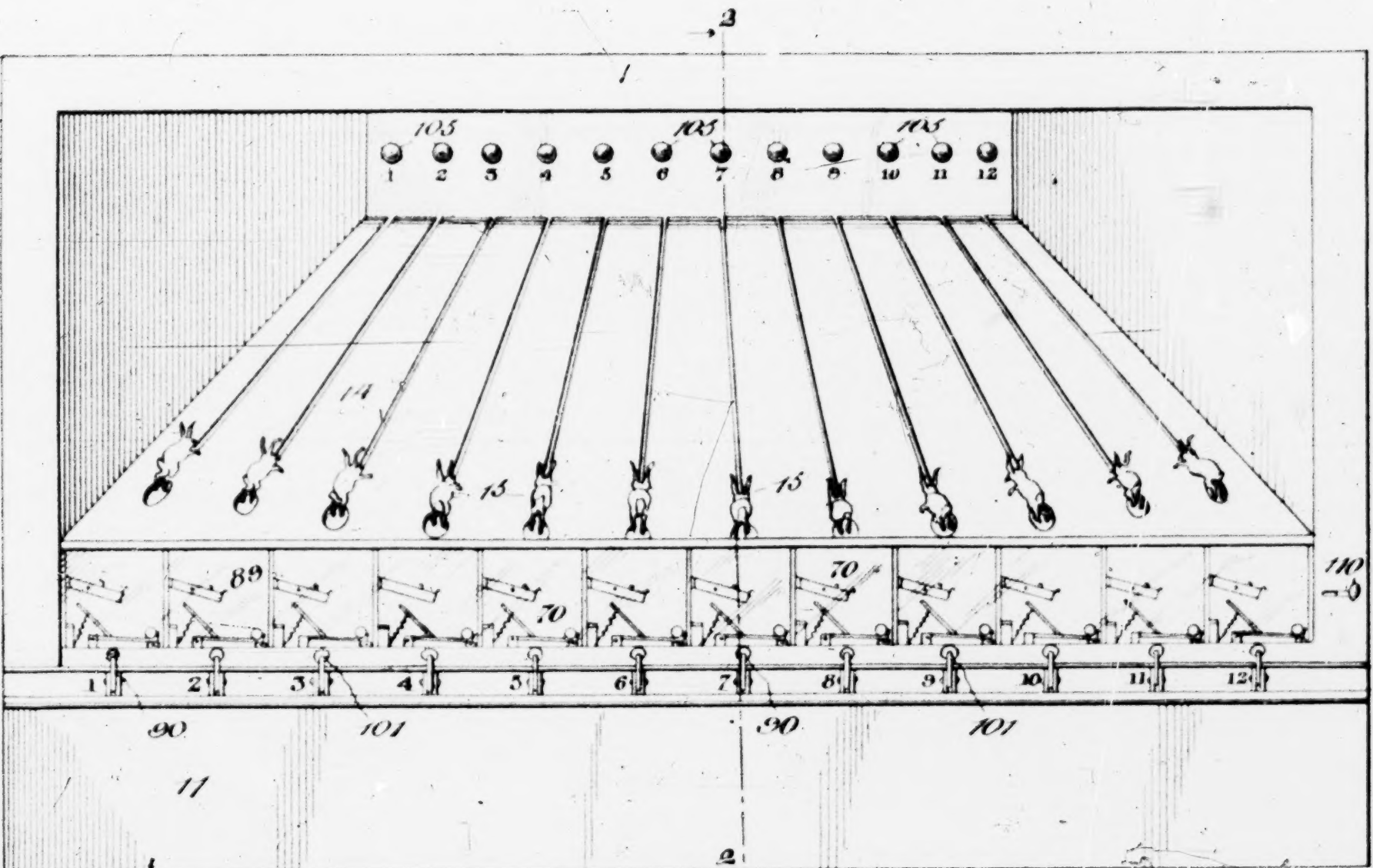


Fig. 1.

WITNESS

*W. E. C. C.*

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BY *Walter J. Evans*

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6 Sheets-Sheet 1

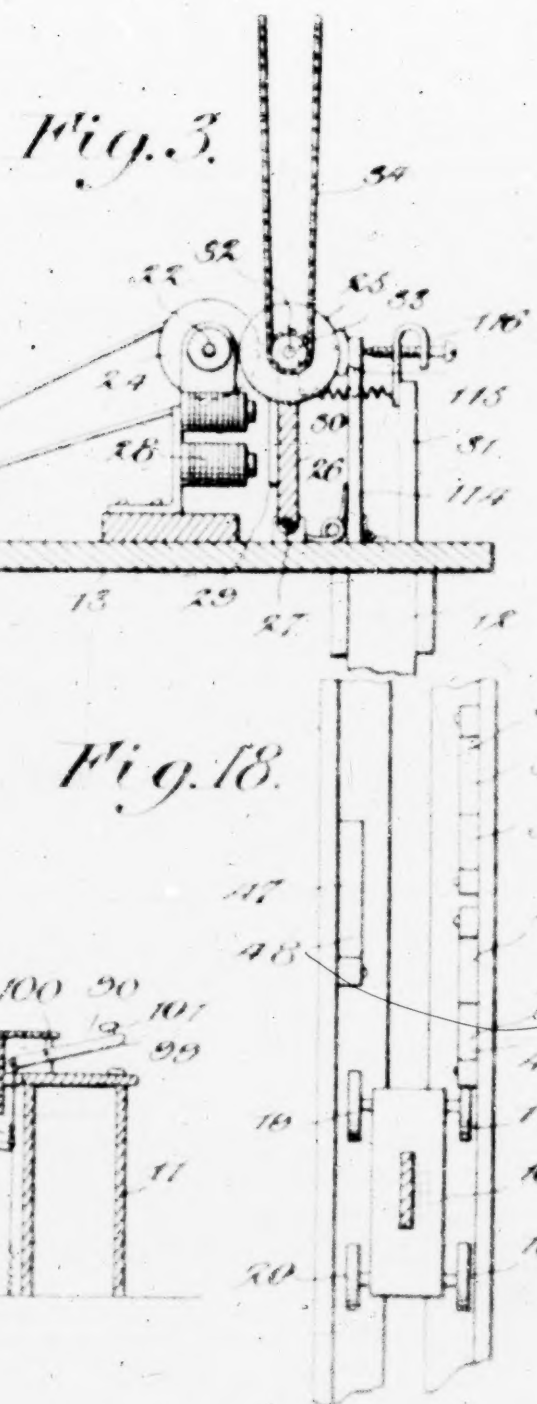


Fig. 19.

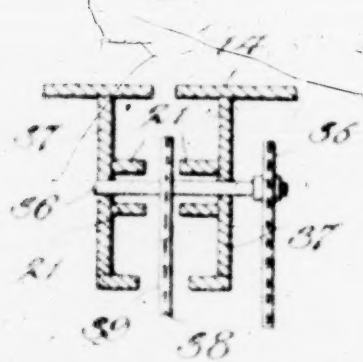
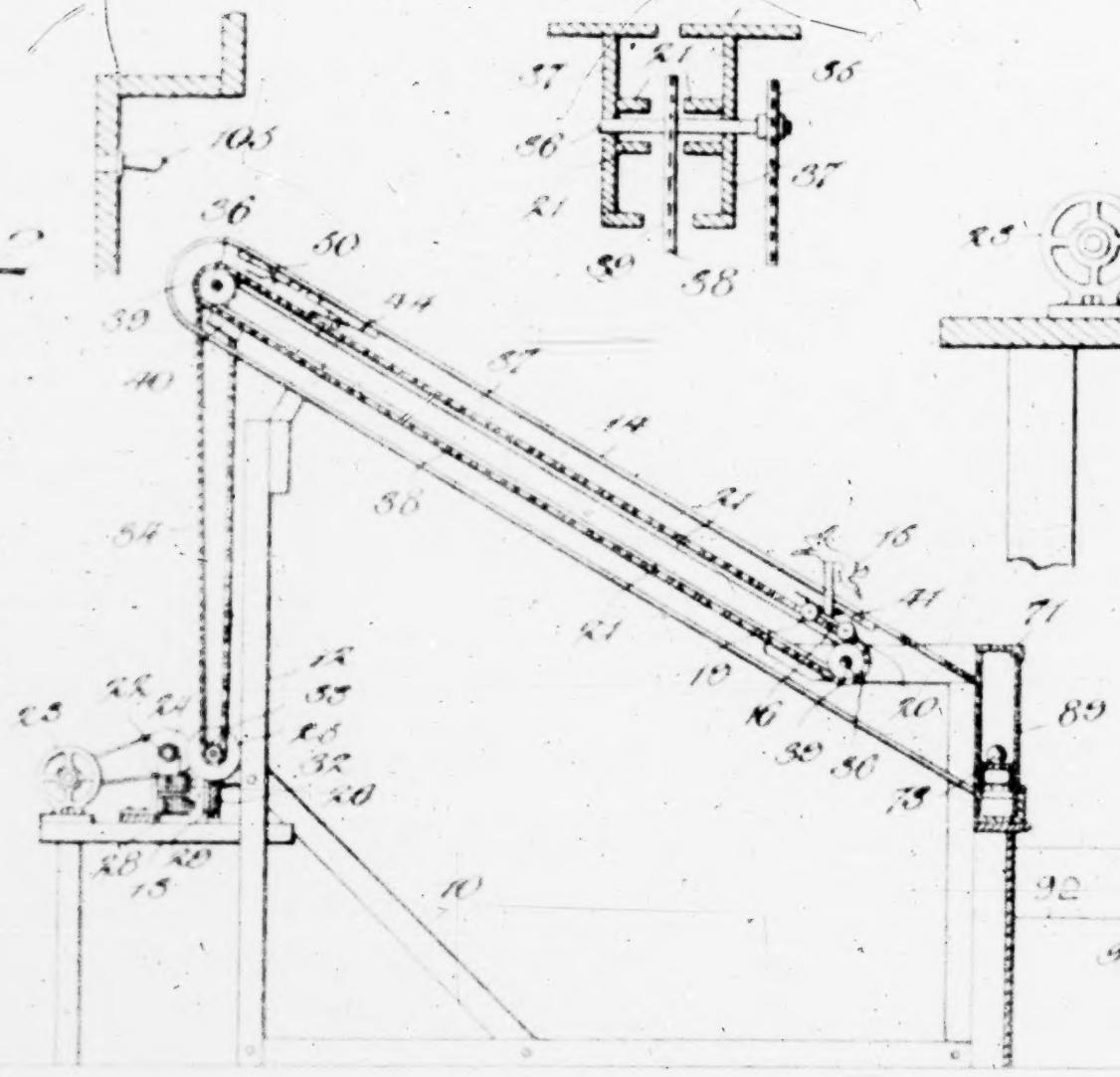


Fig. 2



Witness my hand

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6 Sheets-Sheet 3

Fig. 4.

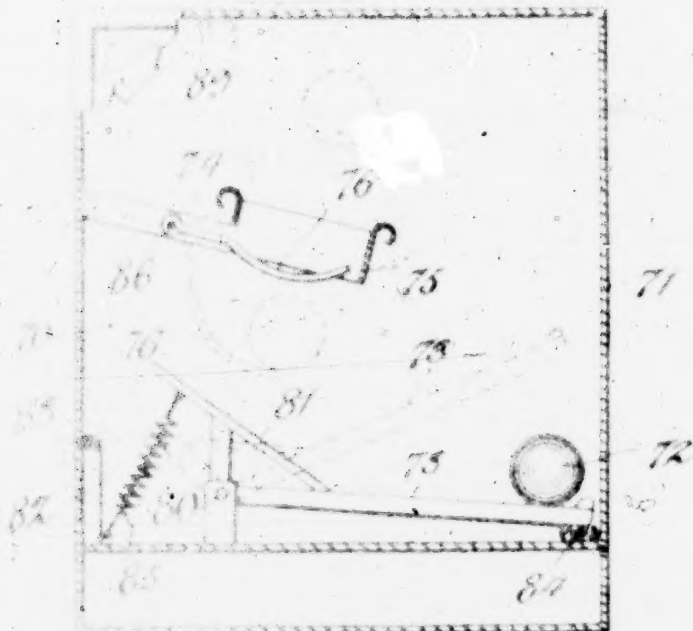


Fig. 5.

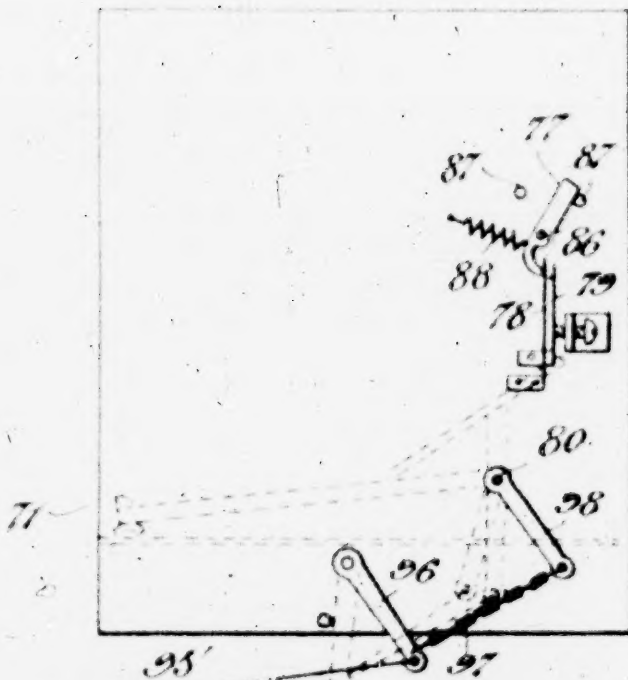


Fig. 9.

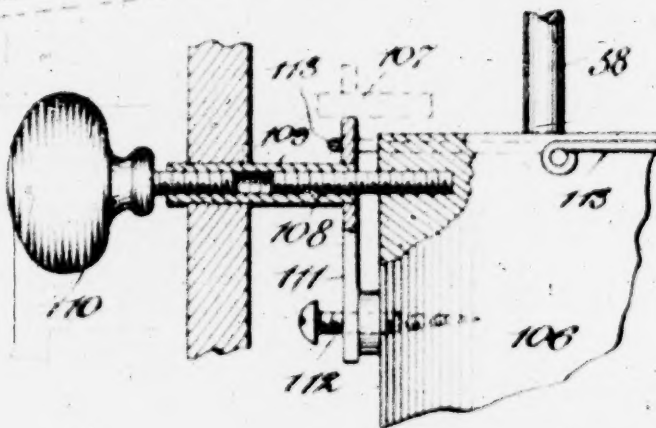
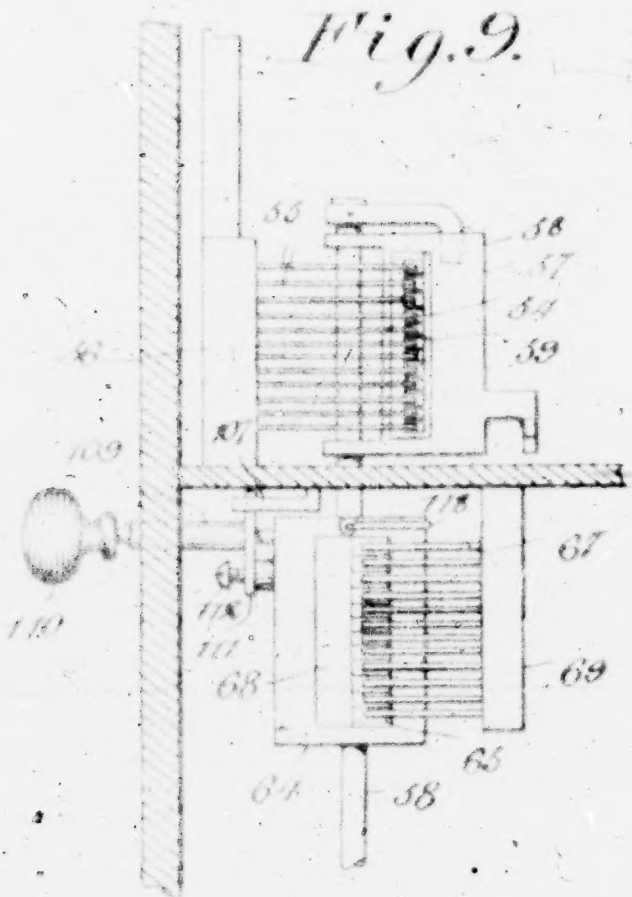


Fig. 8.

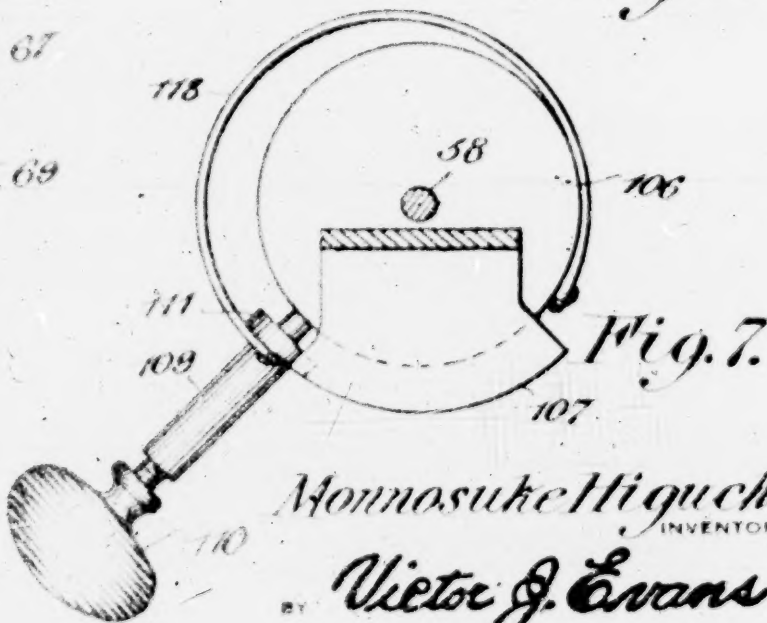


Fig. 7.

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Fig. 10.

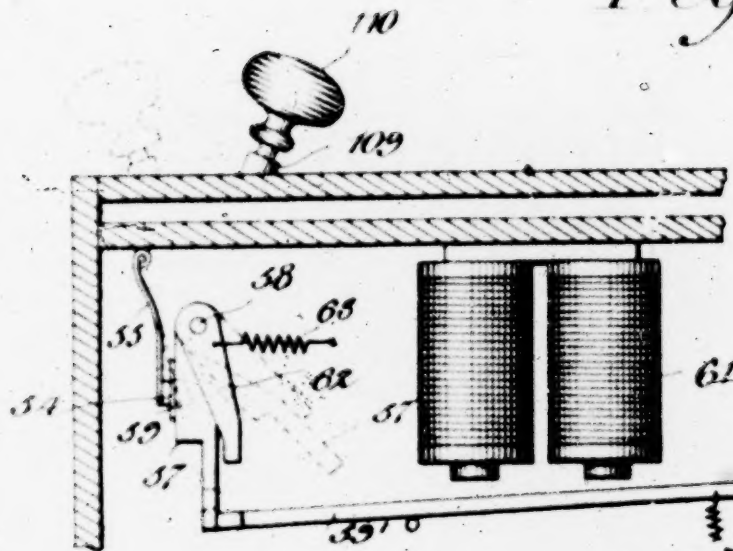


Fig. 17.

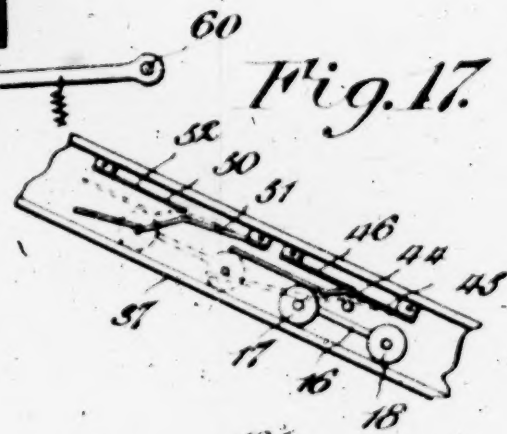


Fig. 11.

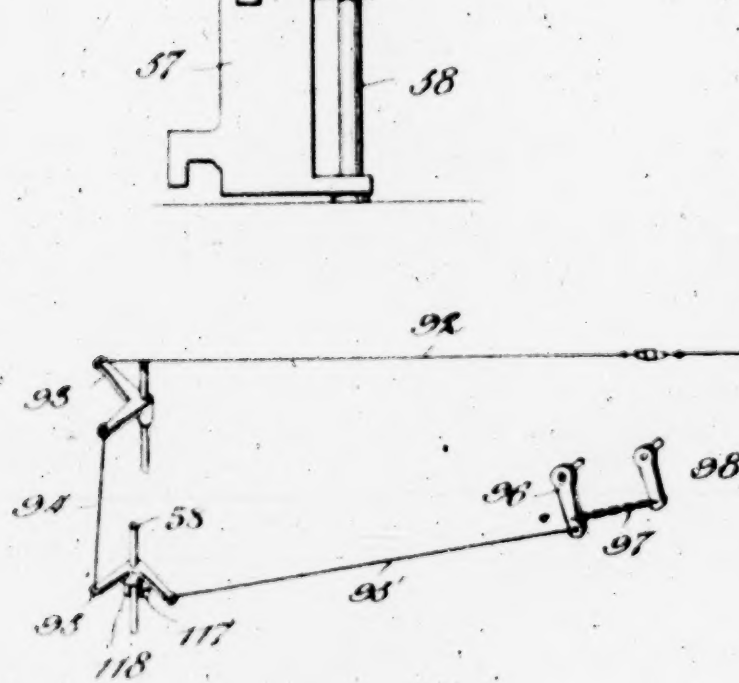
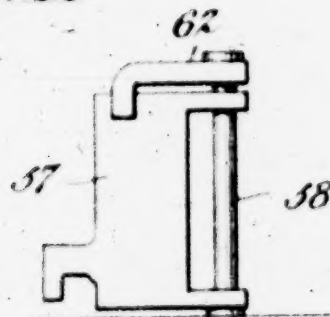


Fig. 6.

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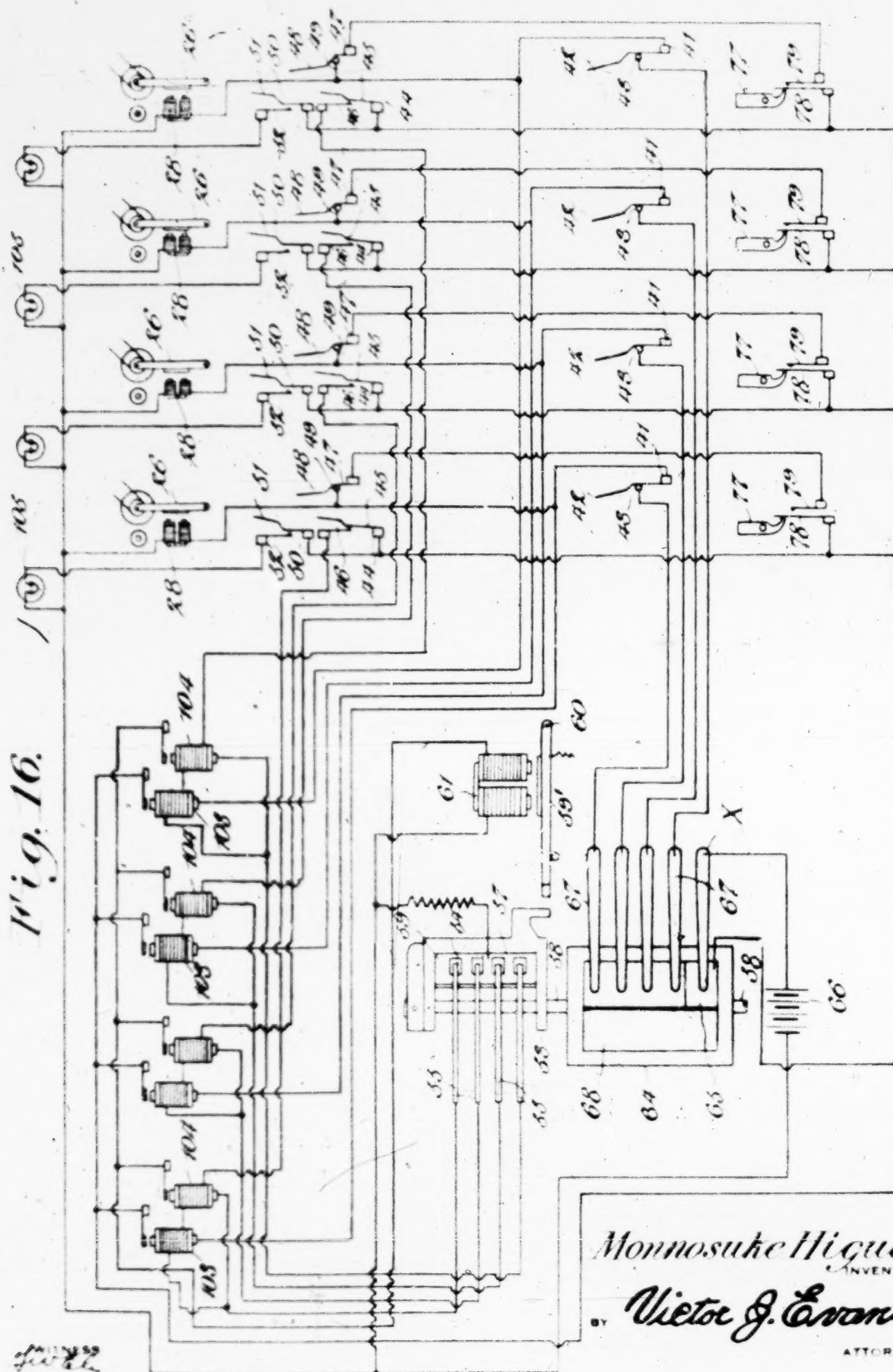
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AMUSEMENT APPARATUS

Filed July 12, 1921

6 Sheets-Sheet 6





## UNITED STATES PATENT OFFICE.

MONNOSUKE HIGUCHI, OF COLLEGE POINT, NEW YORK.

## AMUSEMENT APPARATUS.

Application filed July 12, 1921. Serial No. 484,117.

*To all whom it may concern:*

Be it known that I, MONNOSUKE HIGUCHI, a citizen of Japan, residing at College Point, in the county of Queens and State of New York, have invented new and useful Improvements in Amusement Apparatus, of which the following is a specification.

This invention relates to amusement apparatuses.

Some of the objects of the present invention are: to produce a device or apparatus in which a plurality of objects are movable over a supporting structure part of which structure is in simulation of a hillside, and in which the objects are movable singly and simultaneously, and in which the moving of any one of said objects to a predetermined point renders all of the other objects movable up to certain predetermined points only; to employ normally open circuit closers which are operable by the manipulation and in virtue of encased but freely movable balls; to employ an automatically operable circuit breaker connected in common with different sets of circuits and operable upon the closing of one circuit of one set and the simultaneously opening of one circuit of another set, to cause the closing of a single circuit of still another set of circuits; to employ the said ball actuated circuit closers in a manner so as to be operable from remote points, and to place them in positions of exhibition so that competitors endeavoring to actuate the circuit closers may guide themselves in the exercise of skill, the element most necessary to actuate the circuits; to produce a device as characterized in which the objects are movable singly and simultaneously, and in which the moving of any one particular object of the objects to a predetermined point renders all of the other objects movable singly or simultaneously up to certain predetermined points only, and during the movement of the particular object to the goal which is signified by the lighting of a lamp, the other objects remain immovable; to provide means for effecting the movement of all of the objects simultaneously to a starting point after one of the objects has reached the goal. With these and other objects in view the invention resides in the provision, combination, relative disposition, and operation of parts herein-after more fully described and illustrated in the accompanying drawings, in which:

Figure 1 is a front elevation of the device of the present invention.

Figure 2 is a longitudinal sectional view on the line 2-2, Figure 1.

Figure 3 is an enlarged view of the electromagnetic driving mechanism.

Figure 4 is an enlarged view of one of the ball actuated circuit closers.

Figure 5 is an enlarged view of the contacts forming a part of the ball actuated circuit closer shown in Figure 5, and showing also operating connections.

Figure 6 is a detail view of one of the manipulating elements.

Figure 7 is a detail view of the means for operating the manually operable circuit breaker.

Figure 8 is a plan view of the means shown in Figure 7.

Figures 9, 10, and 11 are detail views of the automatic circuit breaker.

Figures 12, 13, 14 and 15 are diagrammatic views showing individual or branch circuits; showing the parts affected in each circuit.

Figure 16 is a diagrammatic view of the wiring for the complete device.

Figures 17, 18 and 19 are detail views of several features of the invention.

Referring now more particularly to the views of the drawings for all of the details, it will be manifest that, the device of the present invention will include a supporting structure 10 and a supporting structure 11. The structure 10 includes a frame 12. A shelf 13 is carried by the frame 12 and supports parts of the driving mechanism. A race plate 14 is supported by the frame 12 and the top face thereof is painted in simulation of a hillside or mountainside. A plurality of objects—inanimate objects in the nature of rabbits or any other similar or dissimilar living things are employed as a part of the device and it is within the present invention that these objects be made to race up the hillside. In the present instance twelve objects or rabbits are employed and there are twelve manipulators which are operatively related respectively to the said rabbits, and which are for manipulation by competitors. Each competitor will endeavor to get his rabbit to the goal first to be declared the winner. While twelve rabbits have been shown it is to be understood that any number may be employed as may be desired. Each rabbit is mounted on a car-

riage 16 having four wheels 17, 18, 19 and 20. The support for the rabbit which rises from the carriage extends through a slot in the plate 14. Each rabbit and its carriage 5 is supported for movement by tracks 21, 21.

There is provided mechanism for effecting the movement of the rabbits individually. The said mechanism includes a driven shaft 22 supported in suitable bearings attached to the shelf 13. The shaft is driven continuously by a motor, preferably an electric motor 23 through the intervention of pulleys and a belt, or sprocket wheels and a chain may be employed. Secured fast to the shaft 15 22 there are twelve small wooden wheels 24. Coactively arranged with respect to the wheels or pulleys 24 there are wheels or pulleys 25, preferably of wood. Each wheel 25 is carried by a member 26 which is 20 pivotally mounted as at 27. Arranged adjacent each member 26 is an electro-magnet 28 which when energized attracts an armature 29 carried by its relatively arranged member 26 to bring the coactively arranged 25 wheels 24 and 25 into engagement with each other for a purpose to appear. Each member 26 and its wheel 25 is held in a retracted position by a spring 30 which has one end attached to the member 26 and the opposite 30 end thereof is attached to a post 31. Each wheel 25 is supported for rotation on a shaft 32 and each shaft 32 has attached thereto a small sprocket wheel 33. A chain 34 passes around each wheel 33,—there being twelve 35 chains therefor,—and around a sprocket wheel 35.

Inasmuch as each of the rabbits is moved in a similar manner and with similar means which are connected to the driving mechanism of the last preceding paragraph, it will be sufficient for the sake of convenience to describe the means operatively related to but one rabbit. Shafts 36, 36 are supported by members 37, 37 arranged in spaced relation and which are supported by the frame 12. The said members 37, 37 also support the tracks 21, 21. A chain 38 passes around sprocket wheels 39, 39, attached to the shafts 36, 36. One of the shafts 36 has attached 50 thereto one of the said sprocket wheels 35. The carriage 16 is connected to the chain 38 so as to move therewith. A weight 40 is attached to the chain 38 to act as a balance to facilitate the movement of the rabbit. A 55 circuit closer 41 comprising contacts 42 and 43 is arranged at the lower end of one of the members 37 in the path of movement of the wheels 19 and 20 of the carriage 16. A circuit breaker 44 comprising contacts 45 and 60 46 is arranged near the upper end of the other member 37 in the path of movement of the wheels 17 and 18 of the carriage 16. A circuit closer 47 comprising contacts 48 and 49 is arranged in the path of movement 65 of the wheels 19 and 20 and said circuit

closer is arranged slightly in advance of the circuit breaker 44, relatively speaking. A circuit closer 50 comprising contacts 51 and 52 is arranged in the path of movement of the wheels 17 and 18 of the carriage 16, 70 and said circuit closer 50 is arranged in advance of the circuit breaker 47.

As stated it is within the present invention to make provision for the movement of objects—the rabbits 15—individually or singly 75 until one of the rabbits reaches a certain predetermined point after which the other rabbits can move only to certain other predetermined points, this being accomplished by the employment of an automatically 80 operable circuit closer 53 which is connected in a plurality of circuits and serves to make and break each of them in its operation. The circuit closer 53 includes as many contacts 54 as there are rabbits. In the detail views of 85 the device and in the diagrammatic views only four of such contacts 54 have been shown. The contacts 54 are carried by spring members 55 attached to and insulated from any suitable support 56. A member 57 90 is mounted for movement on a shaft 58, the said member 57 carries a contact plate 59 with which the contacts 54 are adapted to engage in the normal position of the said member 57. The member 57 is held in its 95 normal position by the free end of an armature 59' having limited movement in one direction on its pivot 60, which armature is attractable by the magnets of the electro-magnetic device 61 upon the energization 100 thereof. The armature 59' is spring retractable. The member 57 is spring actuated, and it is movable to its normal position by the engagement therewith of a member 62 105 fast with the shaft 58, against the action of the spring 63 which actuates it. Upon the de-energization of the device 61 the armature 59' drops and the free end thereof engages the hooked end of the member 57 to prevent the movement thereof until the device 61 is again energized, as will be understood. 110

As stated before it is also within the present invention to move all of the rabbits simultaneously after one of the rabbits has 115 reached the goal as the winner, this being accomplished by the employment of a manually operable circuit breaker and switch 64 which is common to all of the circuits to be hereinafter described. The device 64 includes a flexible contact 65 in circuit with all 120 of the electro-magnets 28 and a contact X. The said contact 65 is connected in series with a battery 66, as are contacts 67, which are of like number to the rabbits 15. The 125 contacts 67 and X are in the nature of flexible members, which are engageable with a contact plate 68 forming a part of the device 64. The contact 65 and the plate 68 are carried by the shaft 58 hereinbefore men- 130



tioned. The contact 65 and the plate 68 are insulated from each other and from the shaft 58. The contacts 67 and X are carried by a supporting member 69 which is arranged adjacent the contact 65 and the plate 68 to coact therewith for purposes to appear.

Identical operating mechanisms are employed in connection with the driving mechanism for each rabbit, and for the sake of convenience and clearness, one of the said operating mechanisms will be described. A circuit closing device 70 is arranged in a casing 71 supported by the frame 12. The device 70 includes a ball 72, a ball holder 73, a member 74 having a ball receiving part or ring 75, a drop member 76, contact actuator 77, and contacts 78 and 79, the latter being adjustable relatively to the contact 78. The holder 73 is pivotally mounted as at 80, it is limited in its upward movement by the part 81 which is attached to the holder and which encounters the part 82 having the cushion 83. The holder 73 in its normal position engages a cushion 84 and a spring 85 facilitates the movement of the holder in tossing or propelling the ball 72. The drop member 76 is pivotally mounted as at 86, and it is arranged at the bottom of the ring 75 and extends partly within the same. The pivot for the member 76 is extended and has the contact actuator 77 attached thereto. One end of the actuator moves between stops 87, 87 and the opposite end thereof engages the contact 78. The actuator 77 is under the influence of a spring 88 whose normal tendency is to hold the actuator retracted in a normal position. The casing 71 embodies a transparent glass panel 89 through which the ball, its holder and the ring 75 are visible and this is very important for a reason to be explained. A manipulator 90 is arranged at a remote point from the holder 73 and correlated parts, in relation thereto for the operation of said correlated parts, the operation being effected by virtue of the intervention of the spring actuated lever 91, adjustable flexible member 92, bell-crank lever 93, flexible member 94, bell-crank lever 95, pivoted member 96, chain 97 and member 98 connected to the shaft which gives the ball holder its pivotal movement. The manipulator 90 consists of a lever 99 which is pivoted as at 100, and a knob 101 on the exposed end of the lever 99 which is practically encased. By striking the knob 101 a blow, the force of it will be transmitted to the various connected parts to the ball holder 73 causing the ball to take an arcuate course. With the proper skill the ball may be made to pass through the ring 75 with the result that the member 76 will drop and by virtue of the actuator 77 the contact 78 will be moved into engagement with the contact 79 closing the circuit 102 shown in Figure 12. The circuit 102 includes electro-magnet 28,

circuit closer 47, contacts 78 and 79, contacts 65 and X of the device 61, and battery 66. It should now be manifest that, each time the ball 72 is propelled through the ring 75 the circuit 102 will be closed with the result that the electro-magnet 28 will be energized thus attracting the armature 26 thus bringing the wheel 23 into engagement with the wheel 24. Motion is transmitted to the chain 38 through the intervention of parts 33, 34, 35, 36 and 39 thus causing the particular rabbit to move a certain degree depending upon the speed with which the ball passes through the ring 75 and into contact with the drop member 76. With skill the ball may be propelled in a manner so that it will have the proper trajectory and it will pass through the ring 75 into the drop member 76 to move the latter comparatively slow with the result that the circuit 102 will remain closed for a comparatively longer period and as a consequence the rabbit will be made to travel a comparatively greater distance. The employment of the chain 97 and the pivoted member 96 prevents undue force from being imparted to the ball holder 73 and under such arrangement the parts will not be broken, or be deranged.

As the rabbits move up the hillside, one of them will be the first to arrive at a point at which the wheels 47 and 18 of the carriage supporting the rabbit will encounter the circuit breaker 44 of the circuit 203—see Figures 13 and 16—to close said circuit, and the wheels 19 and 20 will encounter the circuit closer 47 and actuate the same to break circuit 102. The circuit 203 includes the electro-magnet 28; twelve sets of electro-magnet circuit breakers 103 and 104—all but one set of the circuit breakers 103 and 104 be respectively in other branch circuits—one set of circuit closers 103 and 104 being necessary to shunt the electrical energy; circuit closer 53; contacts 65 and X of the device 64; circuit breaker 44; and battery 66.

The actuation of the circuit breaker 44, as stated, closes the circuit 203 causing the energization of the magnets of the circuit breakers 103 and 104. The current passes through the contact 54, plate 59, through contacts 65 and X to energize the electro-magnet 28. The current then passes through circuit breaker 104 and the electro-magnetic device 61, which latter device operates to break all of the other branch circuits because the member 57 will be moved, with the result that the contact plate 59 will be moved out of engagement with all of the contacts 54. The current continues to energize the one particular electro-magnet 28 until the carriage wheel 18 passes the circuit breaker 44 just after the wheel 17 has encountered the circuit breaker 50 of 304. It will now be

manifest that, the rabbit is moved by closing circuit 102 by using the manipulator 90 until the carriage wheels actuate the circuit breaker 44 when the circuit closer 53 automatically operates to render the other rabbits movable up to their respective circuit closers 47 where they remain until all of the rabbits are moved in unison in a manner to be explained.

Immediately after the circuit breaker 50 is encountered the wheels 17 and 18 of the carriage move its contact 51 against the contact 52 thus closing the circuit 304. The circuit 304 includes the circuit breaker 50, particular contacts 65' and X' of the device 64, a lamp 105, and battery 66. It will now be manifest that, the rabbit was moved automatically after the carriage wheels 17 and 18 actuated the circuit breaker 44 until the said wheels actuated the circuit breaker 50 for the illumination of the lamp 105. When wheels pass away from circuit breaker 44, the carriage will stop even if contacts 78 and 79 are closed by the manipulation of the manipulators because circuit closer 47 is still open. After the illumination of any lamp 105 by either rabbit carriage wheels and related parts, all of the rabbits are moved in unison to the starting point by the closing of a circuit 405.

The circuit 405 includes electro-magnet 28, circuit closer 41, contacts 67 and X and contact plate 68 of device 64, and battery 66.

The device 64 includes a casing 106 which has a fixed lug 107 thereabove. A pin 108 attached to the casing 106 has arranged thereon a tubular member 109 to one end of which there is attached a handle 110. A member 111 is attached to the member 109 and the same is guided for movement on an element 112 attached to the casing 106. A convolute spring 113 has one end thereof attached to the casing 106 and the other end thereof is attached to the member 111, and the said spring has a normal tendency to hold the member 111 into engagement with the lug 107 at either side thereof. The member 111 on one side holds the contact X into engagement with the contact 65, whereas when the member 111 is disposed in engagement with the lug 107 on the opposite side thereof the contacts 67 engage the contact plate 68. The handle when taken hold of affords a grip for effecting the movement of the member 111 to either side of the lug 107. When the contact plate 68 is brought into engagement with the contacts 67 the circuit 405 which is normally open will be closed with the result that all of the rabbits will be moved in unison to the place where the respective carriage wheels 19 and 20 actuate the respective circuit closers 41 thus automatically cutting off the current. The handle is then turned to the other side to

energize contacts X and 65 (Fig. 13) so that the rabbits from the starting point must be moved by virtue of the manipulation of the manipulators 90.

In order that the driving mechanism which is rendered active by virtue of the energization of the electro-magnet 28 may be stopped when the said electro-magnet 28 is deenergized, pulley 25 is provided with a brake mechanism which includes a spring actuated pivotally mounted member 114 carrying a brake shoe 115 which engages the wheel 25. Adjusting means 116 is employed to compensate the wear of the brake shoe 115 and for the obtainment of the proper braking action as will be understood.

When the member 111 is moved to a position in which the contact plate 68 and the contacts 67 are in engagement, the shaft 58 by reason of its connection to the casing 106, will be turned thus bringing screws or the like 117 carried by the shaft 58 into engagement respectively with lugs 118 of the bell-crank levers 95 which are loosely mounted on the shaft 58. With the screws 117 in engagement with the lugs 118 it is impossible to actuate the ball holders 73 until the member 111 is moved to the opposite side of the fixed lug 107.

From the foregoing it will be manifest that, the rabbits may be moved singly through the manipulation of the manipulators 90; the rabbit reaching its circuit breaker 44 first automatically prevents the other rabbits from moving past their respective circuit closers 47 although the first rabbit to reach its circuit breaker 44 is moved automatically until the lamp 105 is illuminated; the rabbits are movable in unison after the lamp 105 has been illuminated by the first rabbit to reach the goal; the ball holders 73 cannot be operated when the rabbits are being moved in unison; the movement of the rabbits singly is accomplished in a novel manner because of the visible circuit actuating parts which are operatively connected to the manipulators 90 which are arranged at remote points relatively speaking; and the apparatus is one the use of which requires skill more than anything else; the surface over which the rabbits move may simulate a mountain-side or hill-side, or it may be in simulation of anything else as an obvious expedient; and the circuit closing devices 70 may be actuated in any other manner than by throwing balls.

When the wheels encounter circuit breaker 44, circuit 203 will close through contact 53, 103 and 104 which belong to the first carriage. The magnet contact breakers 103, 104, will energize to attract its armature and make two different circuits: —1.— through magnet 61 which breaks the contact 53 so current cannot pass 53. But for only the first carriage, the current will pass through

contact 104 and its armature, so that magnet contacts 103, 104, will not lose their power, and contact 103 will also still be closed:—2.—through contact 103 and its armature, magnet 28 so that while contact 103 is closing, magnet 28 is being engaged, that is, the carriage runs automatically. But shortly after the carriage will break the contact 47 (this current will pass 102 of Fig. 12). The contact 78, 79 is now in the broken circuit 102. The manipulator 90 cannot make the circuit 102 close, for, as explained, the current passes through magnet contact 103 and magnet automatically energizes although main circuit 102 of magnet is broken.

In this way the carriage will encounter contact 50, close the circuit 304 and put light 105 on. Immediately after light is on, wheels will pass contact 44 and magnet contacts 103, 104 lose their power and break contact with their armatures, the circuit through contact 103 to magnet 28 will break and of course, the carriage will stop and because circuit 102 has not yet closed the carriage cannot move.

Other carriages may reach their contact 44 but contact 53 is already broken by the first carriage so that circuit 203 cannot close. When carriages encounter contact 47, their respective circuits are broken and the carriages cannot move further.

After race is finished, or after the first carriage reaches the goal and winner's light is on, the switch 64 must be changed by handle 110 and circuit will change, as in Fig. 15. All magnets 28 will energize and the carriages will move under mountains and come up to starting point. The carriages encounter contacts 41 and break circuit 405, then the carriages stop.

When the handle 110 is turned back by hand, circuit will change as at first and in position to play again.

What is claimed is:

1. In an amusement apparatus as characterized, inanimate life-like objects, driven mechanisms for moving said objects, driving mechanism for operating said driven mechanisms, electro-magnetic controlling mechanism for controlling the operation of the driven mechanisms by the driving mechanism, and operating mechanisms for operating the controlling mechanism.

2. In an amusement apparatus as characterized, inanimate life-like objects, driven mechanisms for moving said objects, driving mechanism for operating said driven mechanisms, electro-magnetic controlling mechanism including circuit closers for controlling the operation of the driven mechanisms by the driving mechanism, and operating mechanisms for operating the controlling mechanism, each of said operating mechanisms including a manipulator, a ball,

a ball holder operatively connected to said manipulator and capable of propelling said ball when operated, and a device operable by said ball which actuates one of said circuit closers.

3. In an amusement apparatus as characterized, inanimate life-like objects, driving means for effecting the movement of the objects singly or in unison, and means for rendering the driving means active including electric circuits each including a circuit closer, a manipulator, a ball, a ball holder operatively connected to said manipulator and capable of propelling said ball when operated, and a device operable by said ball which actuates said circuit closer.

4. In an amusement apparatus as characterized, inanimate life-like objects, driving means for effecting the movement of the objects singly or in unison, and means for rendering the driving means active including electric circuits each including a circuit closer, a pivotally mounted manipulator, a freely movable ball, a pivotally mounted ball holder and actuator arranged remotely from the manipulator and operatively connected thereto and capable of return movement to a normal position, and a device operable by virtue of said ball which device actuates said circuit closer.

5. In an amusement apparatus as characterized, inanimate objects, driving means for effecting the movement of the objects singly or in unison, and mechanism for rendering the driving means active including electric circuits each including a circuit closer, a pivotally mounted spring actuated manipulator, a pivotally mounted spring actuated ball actuator, a freely movable ball confined for movement within certain limits, and a device operable by virtue of said ball for actuating said circuit closer, the said ball actuator being operatively connected to said manipulator.

6. In an amusement apparatus as characterized, inanimate objects, driving means for effecting the movement of the objects singly or in unison; and mechanism for rendering the driving means active including electric circuits each including a circuit closer, a pivotally mounted spring actuated manipulator, a freely movable ball confined for movement within certain limits, a pivotally mounted spring actuated ball actuator operatively connected to said manipulator, a device operable by virtue of said ball for actuating said circuit closer, and cushioning means for said ball actuator.

7. In an amusement apparatus as characterized, inanimate objects, driving means for effecting the movement of the objects singly or in unison; and mechanism for rendering the driving means active including electric circuits each including a circuit closer



er, a pivotally mounted spring actuated manipulator, a freely movable ball confined for movement within certain limits, a pivotally mounted spring actuated ball actuator freely movable, a connection between the manipulator and said actuator for effecting the movement thereof, means allowing the independent movement of the actuator subsequent to its movement with the said connection, and a device operable by virtue of said ball for actuating said circuit closer.

8. In an amusement apparatus as characterized, inanimate rabbits on carriages having traction wheels, driven mechanisms for moving said carriages, driving mechanism for driving said driven mechanisms, electro-magnetic controlling mechanism for controlling the operation of the driving mechanism; the said controlling mechanism including a set of branch circuits and a master circuit; each of the branch circuits when rendered active rendering the driving mechanism operative to move one of said carriages; the master circuit when rendered active rendering all but one of the branch circuits inactive to prevent the movement of all but one of said carriages beyond a predetermined point.

9. In an amusement apparatus as characterized, inanimate rabbits on carriages having traction wheels, driven mechanisms for moving the carriages, driving mechanism for driving said driven mechanisms, electro-magnetic controlling mechanism for controlling the operation of the driving mechanism, the said controlling mechanism including a set of branch circuits and a master circuit, each of the branch circuits when rendered active rendering the driving mechanism operative to move one of said carriages, the master circuit when rendered active rendering all but one of the branch circuits inactive to prevent the movement of all but one of said carriages beyond a predetermined point; and in combination, a set of circuits each including a lamp, a source of electrical energy, a circuit breaker in the path of movement of certain wheels of one of said rabbit-carriages to be actuated thereby to close its respective circuit.

10. In an amusement apparatus as characterized, inanimate rabbits on carriages having traction wheels, driving means for moving the carriages singly or in unison, electro-magnetic controlling mechanism for controlling the operation of the driving means, the said controlling mechanism including a set of branch circuits and a master circuit, each of the branch circuits when rendered active causing the operation of the driving means to move one of said carriages, the master circuit when rendered active causing all but one of the branch circuits to become inactive to prevent the movement of all but

one of said carriages beyond a predetermined point; and in combination, operating mechanism for effecting the operation of the said controlling mechanism.

11. In an amusement apparatus as characterized, inanimate rabbits on carriages having wheels, driving means for moving the carriages singly or in unison, electro-magnetic controlling mechanism for controlling the operation of the driving means, and including sets of branch circuits and a master circuit, the activity of each of one set of said branch circuits rendering said controlling mechanism active, each of said last mentioned circuits including a circuit closer in the path of movement of certain wheels of one of said carriages to be actuated thereby, and a plurality of circuit breakers in said master circuit, the wheels of either carriage actuating one of the circuit breakers of the master circuit and one of the branch circuit closers allowing the movement of one of the said carriages to a predetermined point and preventing the movement of all of the other carriages beyond a predetermined point.

12. In an amusement apparatus as characterized, inanimate rabbits on carriages having wheels, driving means for moving the carriages singly or in unison, electro-magnetic controlling mechanism for controlling the operation of the driving means and including a plurality of circuits, one of said circuits being normally open, a ball actuated device for closing said normally open circuit, a circuit closer in the normally open circuit including a contact in the path of movement of certain wheels of one of said carriages to be actuated thereby to prevent the closing of said normally open circuit by the operation of said ball actuated device.

13. An amusement apparatus as characterized having in combination, a plurality of movable inanimate objects, an electric circuit including a source of energy, an electro-magnetic device and a circuit closer; a ball, a ball actuated device operable by virtue of the ball being propelled through a part thereof, means for propelling said ball, and means for effecting the movement of said objects singly or in unison, the said last mentioned means being operable upon the energization of the said electro-magnetic device in closing said circuit by the actuation of said ball actuated device.

14. An amusement apparatus as characterized having in combination, a plurality of movable inanimate objects, normally open electric circuits each including a circuit closer and an electro-magnetic device; balls, ball actuators, means for effecting the actuation of said circuit closers, said means including ball actuated devices; the balls,

ball actuators and ball actuated devices being encased by casings each having a transparent panel to make the encased parts visible, manipulating means connected to each 5 of said ball actuators.

15. An amusement apparatus as characterized having in combination, a plurality of inanimate objects which are movable singly or in unison, normally open electric 10 circuits each including a circuit closer operable in effecting the movement of one of said objects; balls, ball actuators, means for effecting the actuation of said circuit closers, said means including ball actuated devices; 15 the balls, ball actuators and ball actuated devices being encased by casings each having a transparent panel to make the encased parts visible, and manipulating means connected to each of said ball actuators, said 20 manipulating means including a manipulator arranged at a point remote from its ball actuator.

16. An amusement apparatus as characterized having in combination, a plurality 25 of movable inanimate objects, normally open electric circuits each including a circuit closer; balls freely movable, ball actuators, means for effecting the actuation of the circuit closers including ball actuated devices; the balls, ball actuators and ball 30 actuated devices being encased by casings each having a transparent panel to make the encased parts visible, manipulating means connected to each of said ball actuators, and means for preventing the movement of all 35 but one of the said objects beyond a predetermined point during the movement of the one object to a predetermined point.

17. An amusement apparatus as characterized having in combination, a plurality 40 of movable inanimate objects, means for effecting the movement of the objects singly including normally open electric circuits each including a circuit closer, freely movable 45 balls, ball actuators, operating devices including ball actuated elements; the balls,

ball actuators and ball actuated elements being encased by casings each having a transparent panel to make the encased parts visible, manipulating means connected to each 50 of the ball actuators, means for preventing all but one of said objects beyond a predetermined point during the movement of the one object to a predetermined point, and means electrically connected in each of 55 said circuits by virtue of which the said objects may be moved in unison.

18. In an amusement apparatus, objects, a simulatory surface over which the objects move, movable wheeled carriages each of 60 which supports one of said objects, driving means for effecting the movement of the carriages singly or in unison, and means for rendering the driving means active and inactive including electric circuits each 65 including a circuit closer, and a device operable by a ball to actuate said circuit closer.

19. In an amusement apparatus provided with objects to move along paths of travel, driving mechanism for moving said objects, 70 a pocket and playing ball in said apparatus, and a knob actuated member for throwing said ball into said pocket for placing said driving mechanism in operation.

20. In an amusement apparatus provided 75 with objects to move along paths of travel, driving mechanism for moving said objects, a visible pocket and ball operating mechanism in said apparatus, and a manually manipulated member for throwing the 80 ball into said pocket.

21. A game apparatus which comprises a missile, a casing within which said missile is disposed, means within the casing for 85 throwing the missile and circuit operating means actuated by the missile when the missile is thrown by the skill of the operator in a predetermined manner.

In testimony whereof I have affixed my signature.

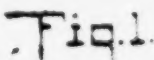
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1,518,754

ELECTRIC AMUSEMENT DEVICE

4 Sheets-Sheet 1



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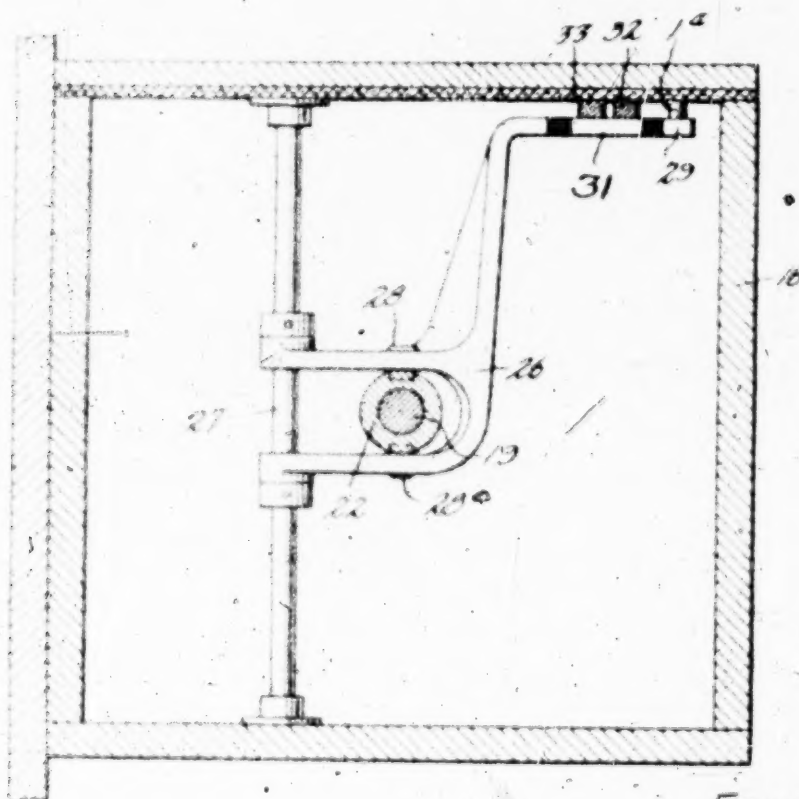
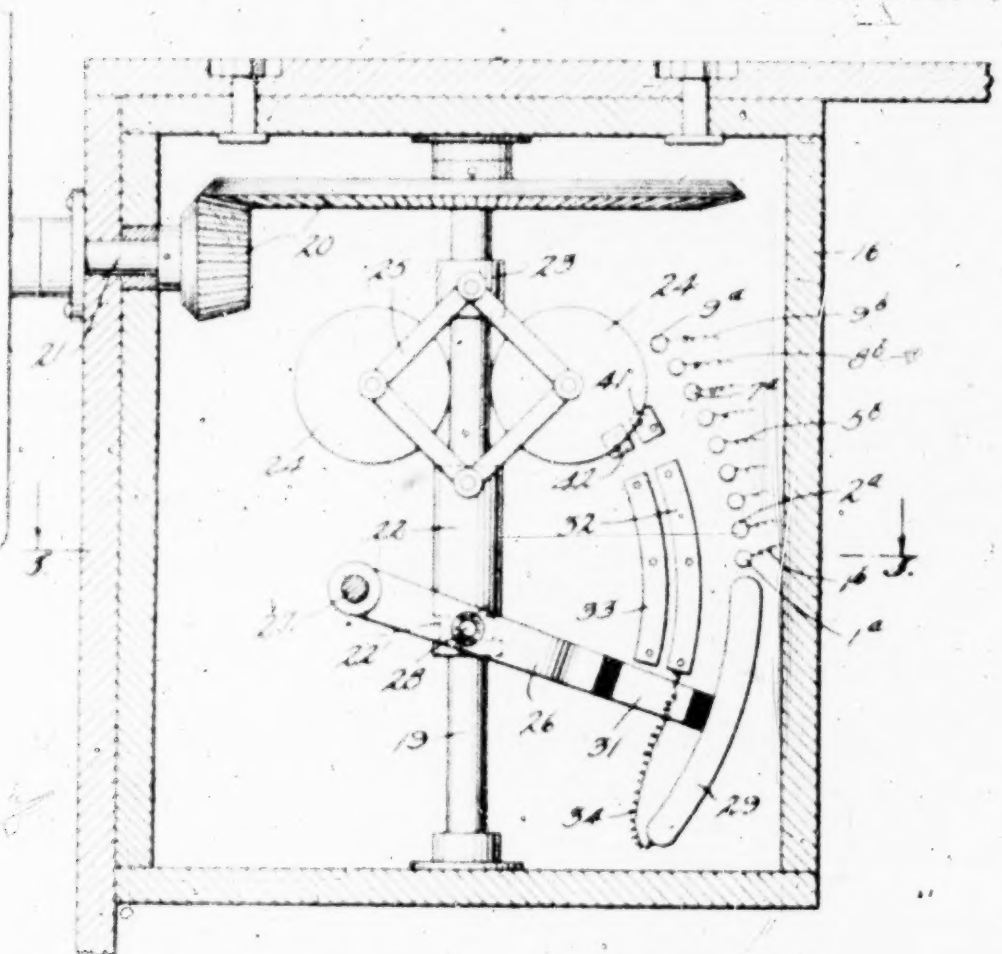
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ELECTRIC AMUSEMENT DEVICE

Original Filed March 5, 1920

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WITNESSES

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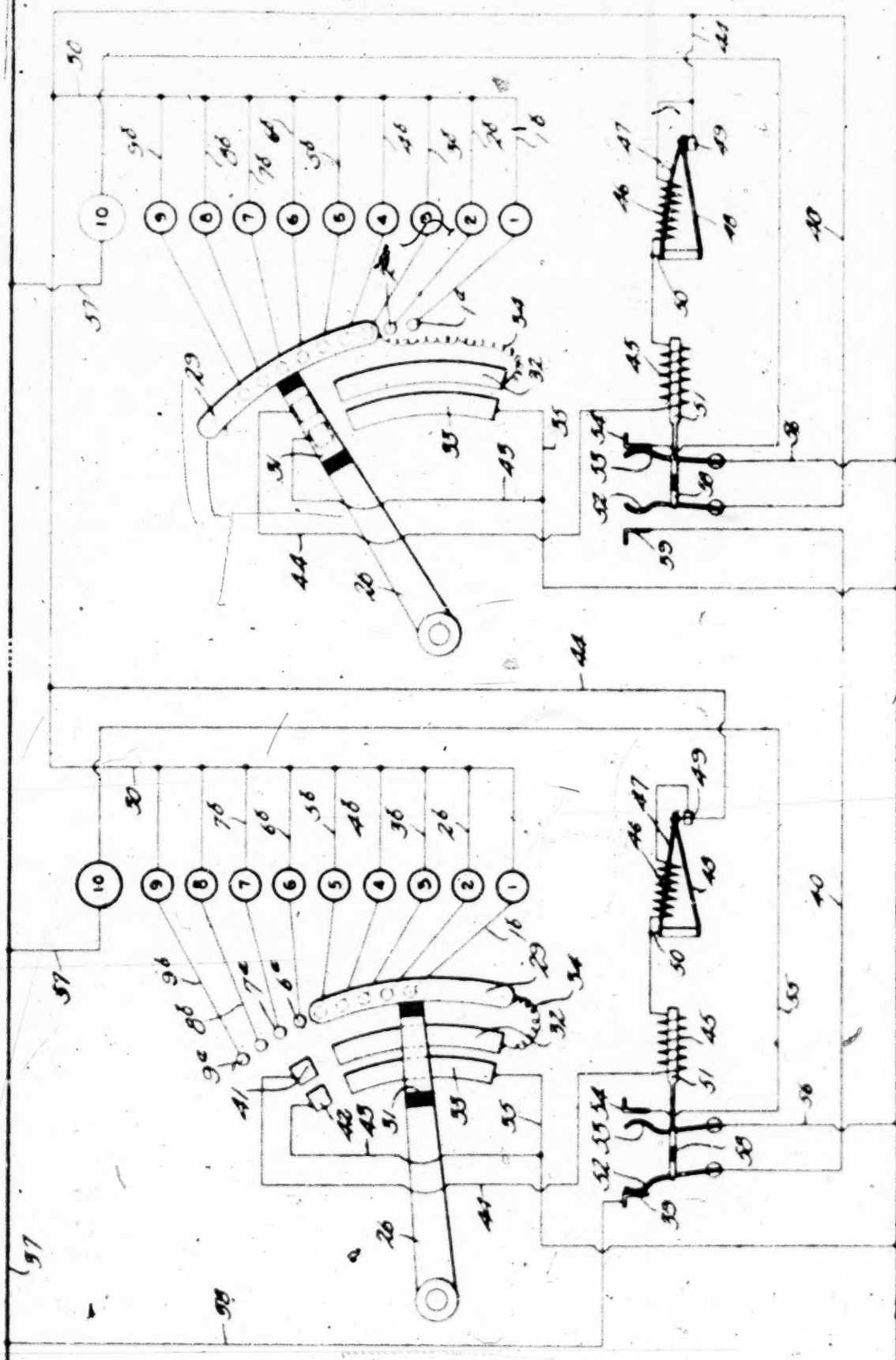
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Fig. 6.



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## UNITED STATES PATENT OFFICE.

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## ELECTRIC AMUSEMENT DEVICE.

Application filed March 5, 1920, Serial No. 363,457. Renewed May 31, 1922. Serial No. 564,847.

*To all whom it may concern:*

Be it known that we, FRANK PRINA and WILLIAM PRINA, citizens of the United States, and residents of Jersey City, in the county of Hudson and State of New Jersey, have invented a new and Improved Electric Amusement Device, of which the following is a full, clear, and exact description.

This invention relates to mechanical and electrical amusement apparatus and has particular reference to that general class of amusement devices in which there are provided a number of competitive units.

Among the objects of the invention is to provide an apparatus of the character set forth in which the several players stationed in proximity to the several units of the apparatus will operate certain mechanism when the signal is given or the time for starting the game is announced, and the results of the operations of these several mechanisms will be made manifest along a visible field and preferably by means of a progressive series of lamps for each unit, the goal striven for by the several players being the illumination of the last lamp in each player's series.

Another object of the invention is to provide an amusement apparatus involving a plurality of units and each unit including a progressive series of lamps, the last lamp of the series being the goal, and the mechanism being so arranged that in order to reach the goal and win a game the winning player must operate his mechanism with a gradual acceleration up to about the time that the last lamp is mechanically reached and thereafter he must maintain for a predetermined length of time a uniform speed in order to cause his winning lamp to be lighted.

A further object of the invention is to provide mechanism whereby the lighting of the winning lamp in any series will automatically and instantly cause the cutting out of any lamps that may be glowing in the remaining series.

A still further object of the invention is to provide means under the control of the operator for maintaining the winning lamp lighted until such time as the operator wishes to restore the mechanism to normal or inactive position, it being borne in mind that so long as the winning lamp remains lighted no other lamps of the mechanism can be caused to glow.

The term "operator" as used herein will be understood as being applicable to the person in charge of the apparatus, and so such party will be distinguished from the players, or patrons of the amusement device.

With the foregoing and other objects in view the invention consists in the arrangement and combination of parts hereinafter described and claimed, and while the invention is not restricted to the exact details of construction disclosed or suggested herein, still for the purpose of illustrating a practical embodiment thereof reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which—

Figure 1 is a front elevation indicating in a somewhat diagrammatic manner the general arrangement and relation of the players' stations and the display or indicator field.

Fig. 2 is a vertical transverse section on the line 2—2 of Fig. 1.

Fig. 3 is an enlarged detail view corresponding to the lower portion of the signal means shown in Fig. 2.

Fig. 4 is a vertical transverse sectional detail on the line 4—4 of Fig. 1.

Fig. 5 is a horizontal section on the line 5—5 of Fig. 4.

Fig. 6 is a diagram of the electrical features covering two of the units and indicating the action of all of the units.

Figs. 7 and 8 are detail views indicating progressive steps in the action of the solenoid operated switch.

Figs. 9, 10, and 11 are detail diagrams indicating variations in arrangement of lamps.

Referring now more specifically to the drawings for a practical embodiment of our invention we show at 15 an upright field having a plurality of vertically arranged series of indicators such as electric lamps. We show ten of such series lettered *a* to *j* inclusive, the same corresponding to a series of players' units *A* to *J*. It is to be understood however that the number of lamps in each series as well as the number of units may be greater or less in any installation than as indicated herein.

For each unit or series of lamps we provide a switch box 16 with which is associated an actuating member in the form of a hand wheel 17, the several hand wheels being arranged in a vertical plane within



convenient reach of the players who may be stationed along a counter 18 or the like, with sufficient space between adjacent wheels to accommodate the several players. The operator will be stationed within the enclosure afforded by the counter 18 and within easy reach of the signal field 15 for the control of certain features soon to be described.

10 In each switch box 16 is a vertical shaft 19 having high speed beveled gear connections at 20 with the shaft 21 to which the wheel 17 is attached. 22 is a sleeve mounted for free sliding movement upon the shaft 19. 23 is a collar fixed to the shaft above the sleeve. Between the sleeve and the collar are centrifugal weights 24 connected by links 25 to the collar and sleeve whereby when the speed of the shaft 19 becomes sufficient to overcome the effect of gravitation on the weights 24, said weights will be thrown outward and upward from the shaft toward the large gear 20 causing the lifting of the sleeve 22. As will be understood the rate of speed of the shaft 19 will determine the degree of elevation of the weights 24, or in other words for any predetermined rate of speed of the shaft the weights and the sleeve will be lifted to a corresponding predetermined degree of elevation.

26 indicates a switch arm in the nature of a yoke spanning the sleeve 22. Said yoke is pivoted on a horizontal support 27 fixed within the switch box. The yoke carries a pair of oppositely arranged studs 28 which project within a groove 22' in the sleeve, hence the free end of the yoke or arm 26 describes an arc of an angle proportionate to the rise of the sleeve 22. Said free end of the arm 26 comprises an arc shaped contact shoe 29 adapted to engage in succession a series of contacts 1<sup>a</sup> to 9<sup>a</sup> inclusive, from which conductors 1<sup>b</sup> to 9<sup>b</sup> respectively lead through signaling members such as lamps 1 to 9 inclusive, all of said conductors on the opposite sides of the lamps being connected to a conductor 30. Adjacent to the shoe 29, but insulated therefrom is a contact bridge 31 adapted to pass over and bridge two bus bars 32 and 33 also arranged in an arc of which the support 27 is the center and hence parallel to the shoe 29 and series of contacts 1<sup>a</sup> to 9<sup>a</sup>. A flexible connection 34 connects the shoe 29 to the bar 32 and a conductor 35 leads from the other bar 33 to a main line 36. From the other main line 37 a conductor 38 leads to and through a normally closed switch 39 at the first player's station and thence through other similar conductors 40 and other switches 39 throughout the entire series of players' stations and switch boxes. Since the switches 39 are all normally closed and are all arranged in series, any one or more of the lamps 1 to 9 in any of the series *a* to *j* may be caused

to glow according to the length of the shoe 29 or the relative position thereof over the several contacts 1<sup>a</sup> to 9<sup>a</sup> in the several switch boxes. It is to be understood that we do not propose to be limited unnecessarily to any particular arrangement or design of the several series of signal devices or lamps. That is to say, they may be arranged in any other manner than in straight lines as shown and the successive contacts 1<sup>a</sup> to 9<sup>a</sup> may be coupled with lamps in any desired sequence, although for the most satisfactory practical purposes the lamps are caused to glow in succession when arranged in a row corresponding to the advent of the shoe into engagement with the successive contacts arranged in a row. In the diagram of Fig. 6 we show two units the first of which shows the shoe 29 in position to light the first five lamps, while the other shows the tenth lamp lighted. The normally closed switch 39 in the latter case is open as a result of the lighting of the 10th lamp, and the breaking of the circuit at any switch 39 serves to break the circuit throughout all of the units, and hence the cutting out of all lamps 1 to 9 in all of the units. So far as the operation of the shoe 29 is concerned in each of the units the operation of the game apparatus may be briefly set forth as follows: With the apparatus idle and with the switches 39 all closed, as many players as may be stationed at the stations A to J will at the proper time or signal begin rotation of their respective wheels or actuators 17. With the turning of these wheels with an accelerated speed the action of the weights 24 will be to cause the switch shoes 29 to be moved over their respective contacts as above described and cause thereby the lamps connected thereto respectively to glow in succession. If the shoe 29 is short enough each lamp 1 to 9 may be caused to glow only momentarily while the shoe is passing over its respective contact, or with the shoe made longer more than one lamp may be made to glow at the same time. We have found, however, that for the highest degree of amusement all nine of the lamps should be arranged to glow at the same time after they have been lighted in succession as they have already been described. These first nine lamps in each series may be of the same character although as to this we do not wish to be limited for they may be of different colors or otherwise different in character, but the tenth lamp is of a distinctive character such as of greater power or of different color, and is to be regarded as the winning lamp.

After the necessary speed of rotation of the actuator is attained to cause the ninth lamp to be lighted a higher degree of speed of rotation must be attained in order to cause the winning lamp 10 to be lighted.

As will be understood from Fig. 4 the bridge 31 as a result of higher speed and a greater lift of the weights 24 will leave the bars 32 and 33 and may engage and bridge two auxiliary contacts 41 and 42, the latter of which is connected through a conductor 43 to the conductor 35. The contact 41 is connected through a conductor 44 to the conductor 30. Interposed in this conductor 44 is a time switch device comprising a solenoid 45, and associated with the solenoid is a high resistance coil 46 with which is used a thermostat having a bar 47 adapted to be heated and expanded by the coil 46 and another bar 48 outside of the coil. Initially the current passing through the wire 44 will serve to heat the coil 46, but because of the resistance will not be sufficient to energize the solenoid to make it operative. When in time the bar 47 is sufficiently heated to cause it to bend, contact will be made at 49 causing the current to pass directly through a branch connection 50 from the wire 44 cutting out the coil 46. With the closing of the circuit at contact 49, the solenoid 45 will be energized and so will actuate its armature 51, the throw of which may be delicately regulated or varied by any means such as a screw 51' fitted in one end of the coil spool.

Attached to the armature 51 are two movable switch points 52 and 53, the former being a part of the switch 39 and the latter being adapted to engage a fixed contact 54 from which a conductor 55 leads to the lamp 10. The movable switch blade 53 is connected through a line 56 to the main line 36, and since the lamp 10 is connected to the other main line 37 through a wire 57, it follows that when the circuit is closed at the switch 54 the lamp 10 will glow. The movement of the switch blade 53 toward the contact 54 will be accompanied with the breaking of the circuit at the switch 39 since the movable blade 52 is connected through the insulated link 58 to the armature connection with the switch blade 53. The breaking of the circuit at any of the switches 39 serves to cut out all of the lamps 1 to 9 in any of the series that may be lighted.

It will be noted that the energizing of the solenoid 45 upon which the breaking of the circuit at 39 and the making of the circuit 54 are predicated is dependent upon a closed circuit through all of the lines 38, 40, and 30, and hence to prevent the failure of the solenoid to make a sufficiently long stroke of the armature to cause the throwing of the movable switch blade 53 into contact with the contact 54, against the force of a spring 59, we provide a peculiarly arranged dog 60 the point of which co-operates with a beveled shoulder 61 formed on the armature. As will be understood from Figs. 3, 7 and 8 the normal position of the dog 60 is

on the main portion of the armature close enough to the shoulder to insure that the solenoid will be functioned by virtue of the energy received through the switches 39, to cause the tapered shoulder 61 to be brought into position to be engaged by the dog. The dog is acted upon by a spring 62 the force of which is superior to that of the spring 59, whereby the spring 62 may act alone to drive the dog from the position of Fig. 7 to that of Fig. 8, thereby completing the throw of the armature and the completing of the circuit at the contact 54. By this time the contact will have been broken at 39. The proper action of the dog 60, as described, is dependent upon the precise throw of the core 51. As above intimated with the breaking of any of the contacts at 39 throughout the series of units, all of the lamps 1 to 9 in all of the series will be cut out. By a slight variation in arrangement of the contacts adjacent to the switch arm 26 the lamps 1 to 9, or any desired number of them, may be continued to glow along with the lamp 10 of the same series so that the winner of the game may have the added satisfaction of having any number of his lamps remaining lighted while all of the other lamps on the field 15 are extinguished. Obviously with the lighting of the winning lamp 10 and the breaking of the main initial circuit through the switch 39 the thermostat and solenoid coils of all the other units are instantly disabled and therefore it is impossible for any other lamp 10 to be caused to light.

Another important function of the dog 60 is to hold the switch blade 53 in contact with the contact 54 and thereby maintain the winning lamp lighted until the operator of the game releases the dog as by pulling downward upon the knob 63 at which time the spring 59 will act to throw the armature back to normal position as shown in Fig. 3. Therefore the manipulation of any of the actuators 17, a circumstance that is liable to happen when dealing with a crowd of amusement seekers, can have no effect upon the signaling devices or lamps because the main or feeding circuit is held open.

We prefer to associate with each armature 51 a counter or tallying device of any suitable structure as suggested at 64, the connection being through a link 65 with the link 58. Consequently an inspection of the several counters which are arranged in plain view of the operator or proprietor will enable him to ascertain the number of times each armature has been actuated and also the number of times that all of the lamps 10 have been lighted, a matter of considerable importance considering that the game apparatus may be under the control of subordinates.

From what has been set forth above the



remaining portion of the operation may be briefly described as follows: After one or more of the actuators have been operated with a sufficiently high and accelerated speed to bring the shoe 29 up to the point of bridging the contact 9\*, the number of lamps of such series being lighted at such time depending upon the length of the shoe, a further acceleration of the speed of the actuator will cause the further lifting of the arm 26 to bring the bridge 31 into contact with the contacts 41 and 42. Whether the bridge 31 will have left the bus bars 32 and 33 by this time will of course depend upon the gap between the bus bars and the other two contacts. If and when the bridge 31 leaves the bus bars, or one of them, the first nine lamps will be cut out so that there may be a time of material duration, and which to the player may seem a long time during which the bridge 31 will lie in contact with the contacts 41 and 42 or near to them, either above or below, before the tenth lamp will be lighted and after the other lamps have become dark. When however the actuator is rotated at a sufficiently high speed which is kept substantially constant for a time, long enough for the circuit passing through the solenoid and thermostat coil to expand the bar 47 and close the contact at 49, the solenoid will be energized and cause the shifting of the double blade switch, at least the initiation of such shifting, and so bring the dog 60 into action to complete such shifting and the closing of the circuit at 53 and 54, lighting the winning lamp. Since the circuit is broken at 39 at the shifted switch all the lamps of the other series of lamps will be disabled because it will be impossible for any other player to close either of the circuits pertaining to his series, the circuit being broken by the breaking of any one switch 39 will prevent the actuation of the solenoid at any other unit because the solenoids are all dependent upon the primary circuit including the switch 39 as a source of energy. Hence after the winning lamp is lighted it will be impossible for any other winning lamp to be lighted, even though the unsuccessful players might continue the movement of their actuators at favorable speeds.

Among the various modifications or variations in arrangement of the structure it is to be noted that the lamps or indicators instead of being arranged singly and in series as in Fig. 6 may be connected electrically in parallel or series parallel and either connected with each of the single indicators at the various stations or instead of said single indicators. For example in Fig. 9 we show an arrangement wherein there are four lamps connected in series parallel at each station. These lamps may

be in series, parallel, or series parallel. There may be only single lamps at all stations, say from 1 to 9, and then any number of lamps at station 10 arranged either in series, parallel, or series parallel. Or as indicated in Figs. 10 and 11 the lamps may be arranged in pluralities and either in series or in parallel, or in any other desired combination of such arrangements, so that the electrical effect may be varied to a very great extent to thereby increase the interest and amusement and accordingly the value of the equipment.

It is to be observed that in the playing of this game the operation of the apparatus is not dependent upon being provided a player at each of the stations A to J, for the apparatus will operate perfectly even though any number of players less than may be accommodated are present and participating. The several signaling devices at the field 15 obviously will remain idle in accordance with the stations that are not occupied by players.

We claim:

1. In an amusement device, the combination of a plurality of series of indicator devices, a corresponding plurality of actuators for players pertaining to the respective series of indicator devices, connections between the indicator devices and the actuators whereby successive indicators in the several series will be made manifest in accordance with the actuation of the actuators, and means serving to cause all other indicator devices to become idle when a certain one of the indicator devices of one of the series is made manifest.

2. In an amusement device, a series of indicators, an actuator adapted for different characters of movement, connections between the indicators and the actuator serving to cause a portion of the indicators to be made manifest progressively in accordance with an accelerated movement of the actuator, and other means auxiliary to said connections serving to cause another indicator to be made manifest as a result of a movement of the actuator different from the accelerated movement above set forth.

3. In an amusement device, the combination of a series of signal means, an actuator for the player, connections between the signal means and the actuator serving to cause a predetermined portion of the signal means to be made manifest progressively as a result of a changeable rate of speed of movement of the actuator, auxiliary signal means, and connections between said auxiliary signal means and the actuator to cause a different indication to be made manifest as a result of the movement of the actuator at a speed different from that already set forth.

4. In an amusement device, the combination of a series of lamps, an actuator for the

player, electric connections between the actuator and the lamps whereby certain of the lamps may be caused to glow, an auxiliary lamp, and electric connections including a time switch between said auxiliary lamp and the actuator whereby said auxiliary lamp may be caused to glow after the lamps aforesaid have been caused to glow and as a result of a material predetermined lapse of time.

5. A device of the nature set forth in the preceding claim in which the first portion of the lamps are caused to glow as a result of a continually variable speed of the actuator.

6. A device of the nature set forth in claim 4 in which the remaining lamp is caused to glow as a result of the movement of the actuator at a speed differing from the speed necessary to cause the first portion of the lamps to be lighted.

7. An amusement device of the nature set forth in claim 4 in which the first portion of the lamps are caused to glow as a result of an accelerated rate of movement of the actuator, while the remaining lamp is caused to glow as a result of a uniform rate of speed of the actuator.

8. In an amusement device, the combination of a series of lamps, an actuator for the player, electric connections between the actuator and the lamps whereby certain of the lamps may be caused to glow, an auxiliary lamp, and electric connections between said auxiliary lamp and the actuator whereby said auxiliary lamp may be caused to glow after the lamps aforesaid have been caused to glow and as a result of a material predetermined lapse of time, said first portion of the lamps being caused to glow as a result of an accelerated rate of movement of the actuator, while the auxiliary lamp is caused to glow as a result of the operation of the actuator at a uniform rate of speed higher than when operated for the first mentioned lamps.

9. In an amusement device, the combination of a series of signal devices of the same character, an actuator, connections between the actuator and the signal devices whereby said signal devices may be made manifest in succession from the actuation of the actuator, an auxiliary signal device, and other connections between it and the actuator serving to cause the aforesaid series of signal devices to be rendered idle coincident with the manifestation of the auxiliary signal device.

10. In an amusement device, the combination of a series of lamps, a player's actuator, connections between the actuator and the lamps whereby a portion of the lamps may be caused to glow in succession, and auxiliary connections between the remaining portion of the lamps and actuator, the latter mentioned connections serving to cause the

latter portion of the lamps to glow as a result of a movement of the actuator in a different manner from the movement necessary to light the first portion of the lamps.

11. In an amusement device, the combination of a plurality of series of indicating devices, a corresponding plurality of actuators pertaining to the respective series of indicating devices, connections between the indicating devices and the actuators whereby successive indicating devices in the several series will be made manifest in accordance with the actuation of the actuators, and means serving to cause all other indicating devices of all other series to become idle when a certain one of the indicating devices of one of the series is made manifest.

12. In an amusement device, the combination of a series of lamps, an actuator for the player, electric connections between the actuator and the lamps whereby a certain portion of the lamps may be caused to glow in succession, and other electric connections between another lamp of the series and the actuator whereby said other lamp of the series may be caused to glow after those previously mentioned have been caused to glow, said other electric connections including means made functional only through a material lapse of time.

13. A device of the character set forth in claim 12 in which said other electric connections include a thermostatic switch which is closed as a result of the passage of a current through a high resistance coil.

14. In an amusement device, the combination of a plurality of series of indicating devices, a corresponding plurality of actuators pertaining to the respective series of indicating devices, connections between a portion of the indicating devices and the actuators whereby certain indicating devices in the several series will be made manifest in accordance with the actuation of the actuators, and means serving to cause all other indicating devices to become idle when a certain other portion of the indicating devices of one of the series is made manifest.

15. The combination of a plurality of series of lamps, a corresponding plurality of actuators pertaining to the respective series of lamps, connections between the lamps and the actuating means whereby successive lamps in the several series will be made to glow in accordance with the actuation of the actuators, and means serving to cause all other lamps to become idle when a certain one of the lamps of one of the series is made to glow.

16. The combination of a plurality of series of lamps, a corresponding plurality of actuators pertaining to the respective series of lamps, electric connections between the lamps and the actuating means whereby successive lamps in the several series will



be made to glow in accordance with the actuation of the actuators, and means serving to cause all other lamps of all other series to become idle when a certain one of the lamps of one of the series is made to glow.

17. The combination of a series of lamps, an actuator adapted for different characters of movement, connections between the lamps and the actuator serving to cause a portion of the lamps to glow progressively in accordance with an accelerated movement of the actuator, and other means auxiliary to said connections serving to cause another lamp to glow as a result of a movement of the actuator different from the accelerated movement above stated.

18. The combination of a series of lamps, an actuator, electric connections between the lamps and the actuator serving to cause a predetermined portion of the lamps to glow progressively as a result of a change in the rate of speed of movement of the actuator, and auxiliary connections between another lamp and the actuator to cause a different lamp to glow as a result of the movement of the actuator at a speed differing from the changed speed above set forth.

19. The combination of a plurality of series of electrically operated signals, a corresponding plurality of actuating means pertaining to the respective series of signals, connections between the signals and the actuating means whereby successive signals in the several series will be operated in accordance with the actuation of the actuators, and means serving to cause all other signals to become idle when a certain one of the signals of one of the series is made to operate, said connections including a shiftable double switch member for each series of signals.

20. The combination of a series of electrically operated signals, an actuator adapted for different characters of movement, connections between the signals and the actuator serving to cause a portion of the signals to operate progressively in accordance with an accelerated movement of the actuator, and other means including a solenoid auxiliary to said connections serving to cause another signal to operate as a result of a movement of the actuator different from the accelerated movement before stated.

21. A device of the nature set forth in claim 20 in which the auxiliary means includes, in addition to the solenoid, a thermostat to control the time of action of the solenoid.

22. The combination of a series of lamps, an actuator, electric connections between the actuator and the lamps whereby a certain portion of the lamps may be caused to glow in succession and other electric connections between another lamp of the series and the actuator whereby said other lamp of the series may be caused to glow after those

previously mentioned have been caused to glow, said other electric connections including a shiftable double switch and a time controlled solenoid to shift the switch.

23. A device of the nature set forth in claim 22 in which there is employed an electrically operated thermostat in circuit with the solenoid.

24. A device as set forth in claim 1 in which one of the indicator devices in each series is designated as the winner and is of a different character from the other indicators of the same series.

25. A device as set forth in claim 2 in which the indicator last mentioned is of a distinctly different character from those made manifest by the accelerated movement of the actuator.

26. In an amusement device, the combination of a plurality of series of signal devices, a plurality of actuators pertaining to the several series of signal devices respectively, connections between the several actuators and the signal devices pertaining thereto whereby certain signal devices may be made manifest in succession from the movement of the actuators, one signal device in each series being designated as the winner, said connections being so arranged that when the successful winner indicator is made manifest all of the other indicators will be rendered idle.

27. Mechanism as set forth in claim 26 in which the connections between the actuators and the indicators are so arranged that when the successful winner indicator is made manifest it is impossible for any other winner indicator of the other series to be made manifest.

28. Mechanism as set forth in claim 26 in which each series of indicators comprises one designated as the winner which is of a distinctly different character from the other indicators of the same series and in which the connections between the actuators and the indicators are so arranged that when the winner indicator of any series is successfully manifested it is rendered impossible for the winner indicator of any other series to be made manifest.

29. In an amusement device, the combination of a series of indicators, an actuator, connections between the actuator and the indicators whereby a certain portion of the indicators may be caused to be made manifest in succession, and other connections between another indicator of the series and the actuator whereby said other indicator may be caused to be made manifest after those previously mentioned have been made manifest, said last mentioned connections including means made functional only through the operation of the actuator at a predetermined rate of speed throughout a material lapse of time.

30. In an amusement apparatus, the combination with a series of indicators, of a player's actuator, and connections between the actuator and the indicators whereby they are capable of being made manifest in a predetermined order, said actuator mechanism comprising a hand operated member adapted for relatively high speed, a member movable therefrom at relatively low speed, and other devices movable according to a predetermined law as a result of the acceleration of said low speed member and actuated therefrom.

31. A device of the nature set forth in claim 30 in which the high speed member is a hand wheel having a pinion and the low speed member is a large gear meshing with said pinion and mounted upon an upright shaft, and the other devices include an arm movable in an arc of a circle adjacent to said shaft, a member attached to said arm for moving it, and centrifugally operated means carried by the shaft and connected to the member associated with the arm for operating the arm in accordance with the rate of speed of the hand member and gears.

32. In mechanism as set forth in claim 30 in which the actuator includes a vertical shaft and means for rotating it at variable speeds, centrifugally operated means carried by the shaft, an arm mounted on a horizontal pivot adjacent to the shaft, and connections between the centrifugally operated means and the arm including a sleeve movable along the shaft, whereby the arm is swung upward according to the rate of speed of the shaft.

33. An actuator mechanism for hand operated electrical indicator devices, the same comprising a shaft, means for rotating the shaft at variable rates of speed, centrifugally operated means attached to the shaft, an arm pivoted at one end adjacent to the shaft on an axis at right angles to the shaft and constituting a lever of the third class, slidable connections between the arm intermediate of its ends and the centrifugally operated means whereby the arm is drawn toward the same according to the increase of speed of rotation of the shaft, and a series of electric contacts co-operating in succession with a portion of the arm according to the extent of movement thereof.

34. An actuator mechanism for hand operated electrical indicator devices, the same comprising a shaft, means for rotating the shaft at variable rates of speed, centrifugally operated means attached to the shaft, an arm pivoted adjacent to the shaft on an axis at right angles to the shaft, slidable connections between the arm and the centrifugally operated means whereby the arm is drawn toward the same according to the increase of speed of rotation of the shaft,

and a series of electric contacts co-operating in succession with a portion of the arm according to the extent of movement thereof, said series of contacts being arranged in an arc of a circle whose center is the axis of movement of the arm, and there being provided other contacts auxiliary to the series aforesaid, the arm including a plurality of spaced bridging members for co-operation with the several sets of contacts.

35. An actuator mechanism for hand operated electrical indicator devices, the same comprising a shaft, means for rotating the shaft at variable rates of speed, centrifugally operated means attached to the shaft, an arm pivoted adjacent to the shaft on an axis at right angles to the shaft, slidable connections between the arm and the centrifugally operated means whereby the arm is drawn toward the same according to the increase of speed of rotation of the shaft, and a series of electric contacts co-operating in succession with a portion of the arm according to the extent of movement thereof, there being provided a pair of bus bars arranged concentric with the axis of the arm and with which a bridging member carried by the arm is adapted to co-operate.

36. An actuator mechanism for hand operated electrical indicator devices, the same comprising a shaft, means for rotating the shaft at variable rates of speed, centrifugally operated means attached to the shaft, an arm pivoted adjacent to the shaft on an axis at right angles to the shaft, slidable connections between the arm and the centrifugally operated means whereby the arm is drawn toward the same according to the increase of speed of rotation of the shaft, and a series of electric contacts co-operating in succession with a portion of the arm according to the extent of movement thereof, there being provided a pair of bus bars concentric with the axis of the arm and a pair of auxiliary contact members being arranged opposite one end of the bus bars and spaced therefrom, and the arm including a bridging member adapted to co-operate with the bus bars and the auxiliary contacts in succession.

37. Mechanism as set forth in claim 33 in which there are provided indicators, a series of contacts in electrical connection with a portion of the indicators and the arm includes a contact member adapted to bridge certain or all of said contacts according to the speed of rotation of the actuator shaft, in which there are provided also a pair of spaced contacts for co-operation with other bridging means carried by the arm for making manifest the remaining portion of the indicator devices after the first portion had been made manifest, said pair of contacts being included in an auxiliary circuit with which is associated a time switch demand-



ing thereby a lapse of a material amount of time to make the last mentioned signal device manifest.

38. Mechanism as set forth in claim 1 in which each series of indicators comprises a number of members which are made manifest and then become idle when another one of the members becomes manifest.

39. In an amusement device, a plurality of indicators, an actuator operative at variable rates of speed, and connections between the indicators and the actuator serving to cause said indicators to be made manifest one after another, said connections including means dependent for manifestation of the indicators upon an accelerated movement of the actuator.

40. In an amusement device, a plurality of indicators, an actuator operative at changeable rates of speed, and connections between the indicators and the actuator whereby the indicators may be made manifest one after another, said connections including means dependent for manifestation of the indicators upon a continual change of speed of movement of the actuator.

41. In an amusement device, a series of indicators, an actuator, and connections between the indicators and the actuator serving to cause the indicators to be made manifest one after another, all the indicators except the last being made manifest as a result of an accelerated rate of movement of the actuator, while the connections including a time device serving to cause the last indicator to be made manifest only after a lapse of time following the preceding indicators.

42. Mechanism as set forth in claim 40 in which there is provided an auxiliary indicator and a time device serving to cause the auxiliary indicator to be

made manifest from the actuation of the same actuator after the lapse of a predetermined length of time.

43. Mechanism as set forth in claim 2 in which means is provided to cause the indicators to be made manifest in accordance with a continually variable rate of speed of the actuator for a part of the series and thereafter a motion of the actuator different from said continually variable rate of speed is essential through a predetermined time for the manifestation of the last indicator.

44. In an amusement device, the combination of a plurality of indicators, the last of which is distinguished as the winner, an actuator, and connections between the actuator and the indicators, said connections being so arranged that the rate of speed of the actuator essential for making manifest the winning signal is different from the rate of speed thereof while any other indicator is being manifested.

45. Mechanism as set forth in claim 44 in which the winning indicator is made manifest as a result of the operation of the actuator at a uniform speed.

46. Mechanism as set forth in claim 44 in which the winning indicator is made manifest as a result of the operation of the actuator at a uniform rate of speed for a predetermined length of time.

47. Mechanism as set forth in claim 44 in which the winning indicator is made manifest as the result of the continued movement of the actuator at a uniform rate of speed, while the other indicators have previously been manifested as a result of a variable rate of speed of the actuator.

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June 12, 1923.

1,458,884

J. IRSCH ET AL

AMUSEMENT DEVICE

Filed Feb. 7, 1922

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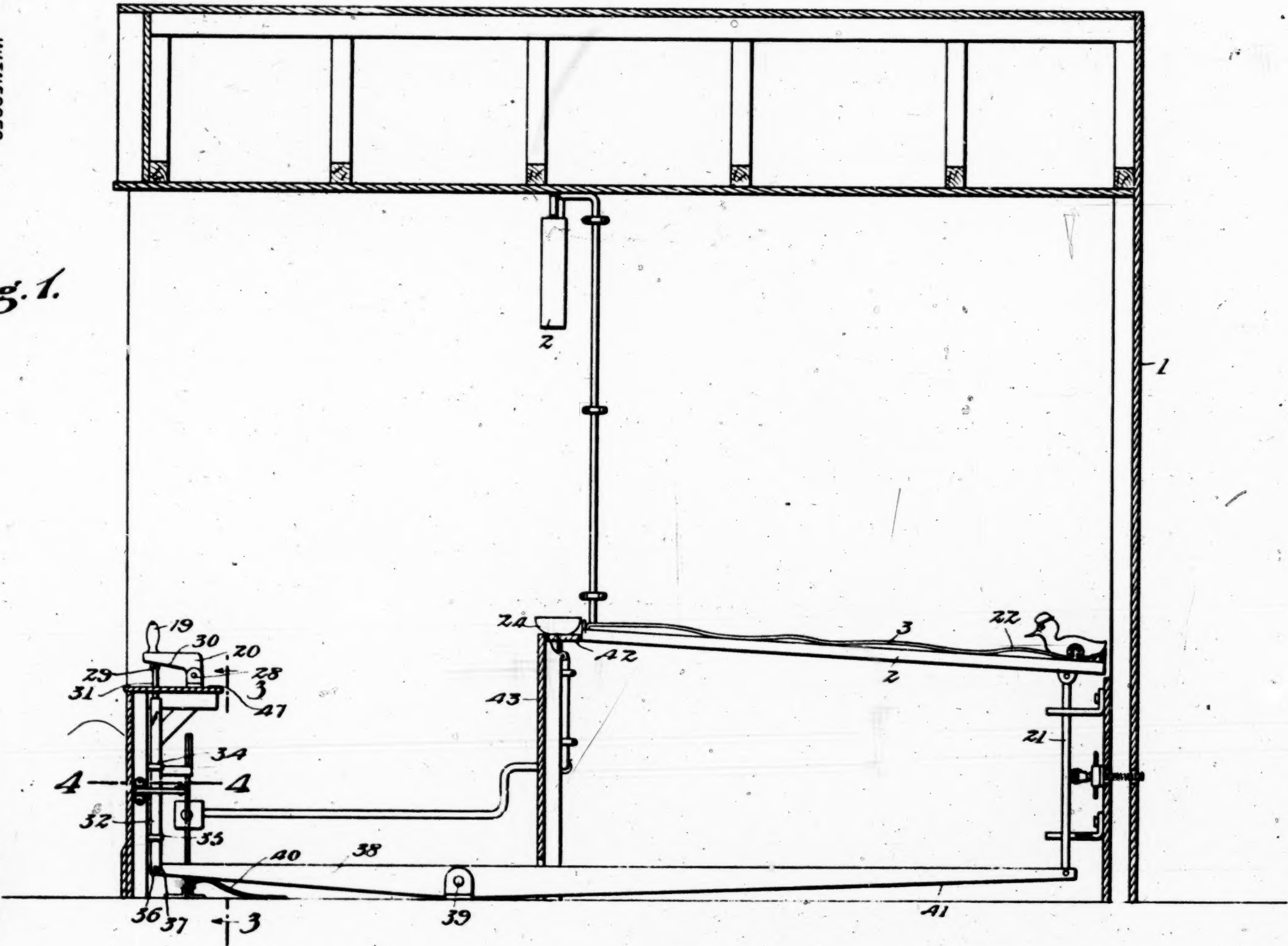


Fig. 1.

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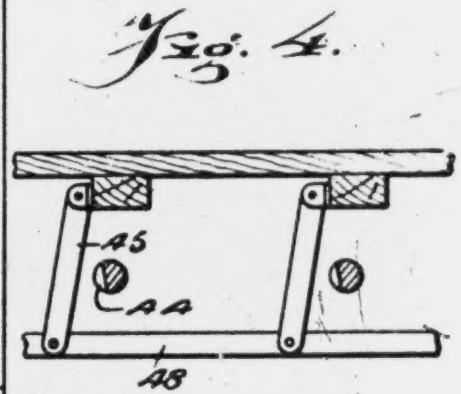
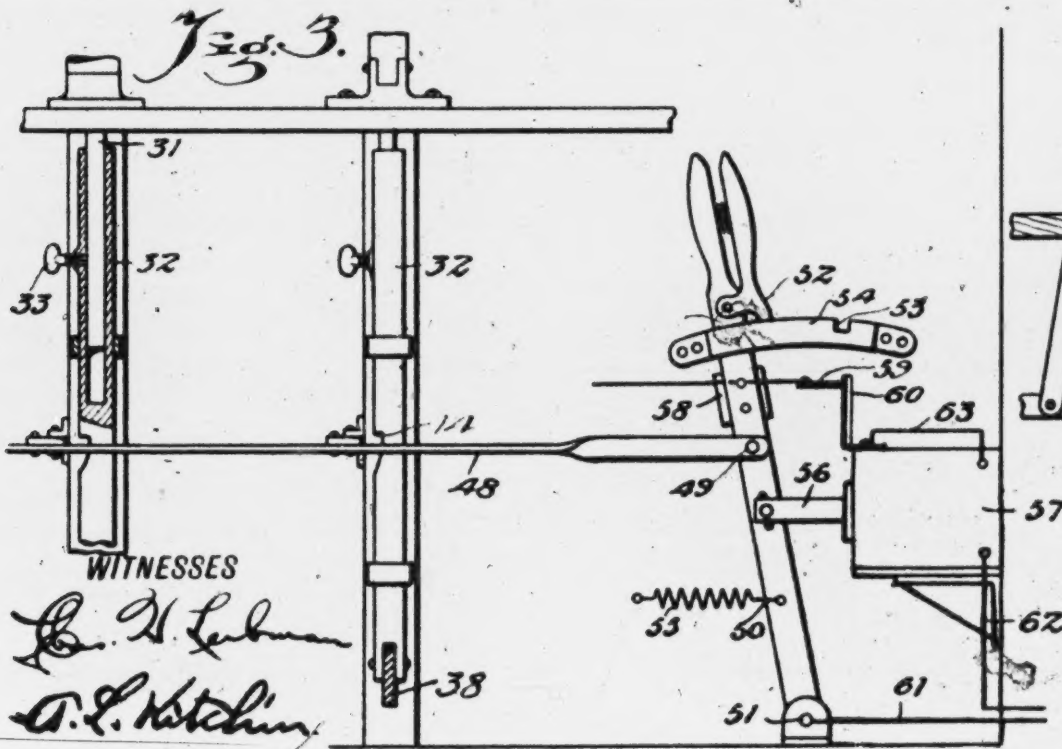
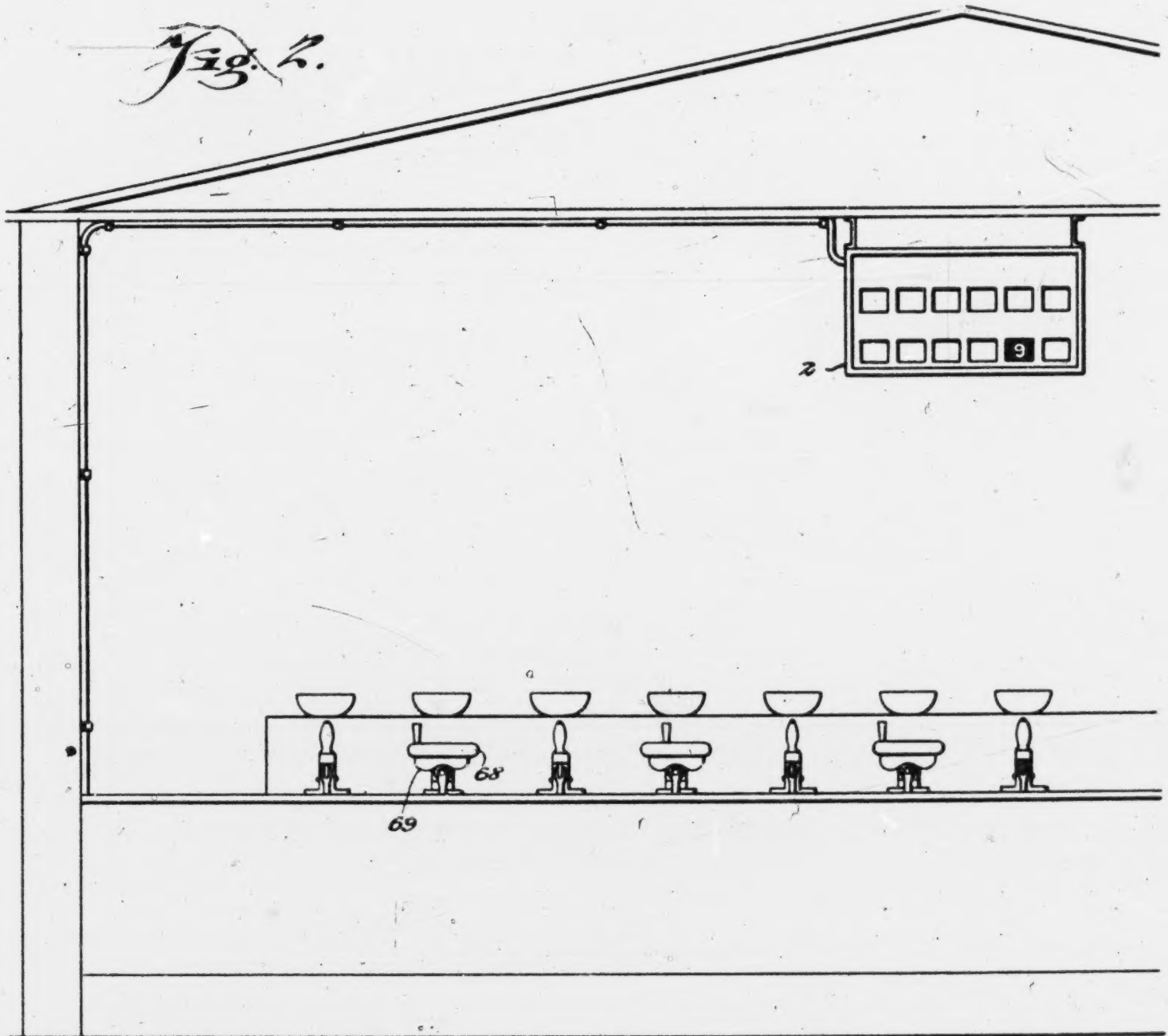
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3 Sheets-Sheet 2



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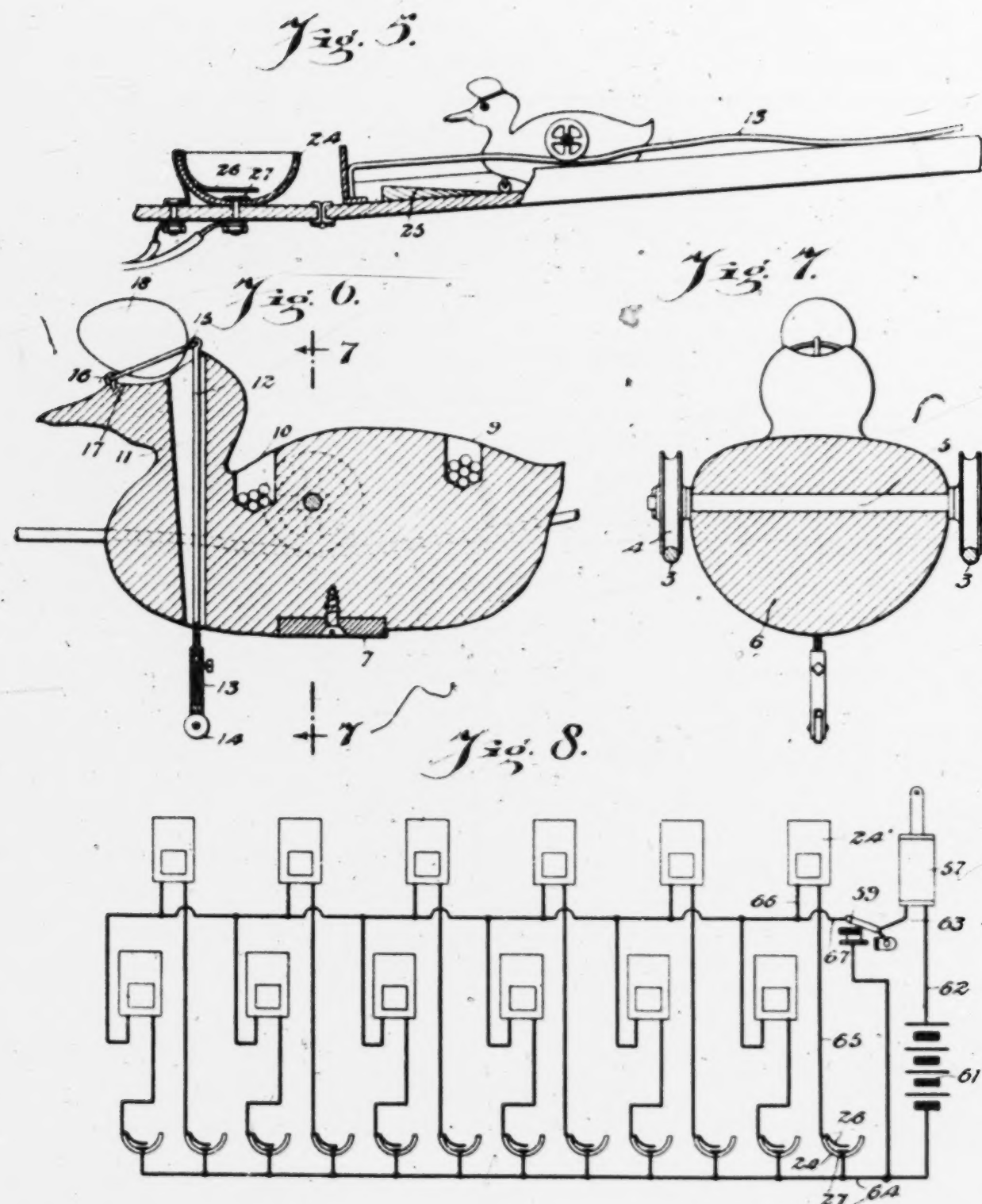
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## UNITED STATES PATENT OFFICE.

JACOB IRSCH, OF LONG ISLAND CITY, AND JAMES MARKEY, OF NEW YORK, N. Y.

AMUSEMENT DEVICE

Application filed February 7, 1922. Serial No. 594,994.

*To all whom it may concern:*

Be it known that we, JACOB IRSCH and JAMES MARKEY, both citizens of the United States, and residents, respectively, of the city of New York, Long Island City, borough of Queens, in the county of Queens and State of New York, and the city of New York, borough of Manhattan, in the county and State of New York, have invented a new and Improved Amusement Device, of which the following is a full, clear, and exact description.

This invention relates to an amusement device and has for an object to provide a construction wherein the players may see the effect of their efforts during the progress of the game.

Another object of the invention is to provide an apparatus wherein a number of moving parts are caused to operate by certain actions of the players, the operation being controlled by the players within certain limits.

A further object of the invention is to provide an amusement device in which a number of objects are caused to travel from one part of a track to another through the manual operation of an actuating mechanism, the arrangement being such that if the actuating mechanism is not properly operated, the members will fail to perform the desired function.

In the accompanying drawings—

Figure 1 is a longitudinal vertical section through an amusement device disclosing an embodiment of the invention.

Figure 2 is a front view of part of the device shown in Figure 1.

Figure 3 is a fragmentary sectional view through Figure 1 approximately on line 3—3, the same being on an enlarged scale.

Figure 4 is a fragmentary sectional view through Figure 1 approximately on line 4—4.

Figure 5 is a fragmentary view partly in section showing the end of the track illustrated in Figure 1.

Figure 6 is an enlarged sectional view through the object to be operated, the same being shown in the form of a duck.

Figure 7 is a sectional view through Figure 6 on line 7—7.

Figure 8 is a diagram of the wiring disclosing certain features of the invention.

Referring to the accompanying drawings by numeral, 1 indicates a housing of any

kind and 2 an ordinary annunciator of any desired kind, that shown being illustrated as dropping a number into view when operated. Arranged at the back part 60 of the housing 1 are a number of boards 2 acting as runways on each of which is positioned a pair of tracks 3 designed to receive the grooved wheels 4 carried by an axle 5 connected with the duck 6, which duck if desired may be eliminated and other objects used as the movable member. The duck 6, if desired, may be provided with a weight 7 at the bottom so as to make it properly swing on the axle 5 70 and cause the grooved wheels 4 to properly operate on the tracks 3. In case the duck should be somewhat unbalanced, small weights may be dropped into either of the pockets 9 and 10 whereby a proper balance 75 may be secured.

The duck is provided with an aperture 11 near the front through which a rod 12 extends, said rod having a threaded member 13 screwed thereon whereby the roller 14 carried by member 13 may be adjusted toward and from the duck. Rod 12 is pivotally connected with a ring 15 which in turn is pivotally mounted at 16 on the head of the duck. The head of the duck is provided with a cavity 17 whereby an egg 18 may be readily set into the ring 15 and the egg remain in place as the duck travels from one end of the track 3 to the other. Normally the tracks are inclined toward the rear as shown in Figure 1 90 but when the grip 19 is properly actuated by a player, the hand lever 20 will be moved downwardly and certain parts, hereinafter fully described, operated for raising the link 21 at the rear of the housing 1 whereby the particular platform 2 associated with the grip 19 will be elevated so that it will incline to the front and thereby cause the duck to move under the action of gravity toward the front. This inclination of the track 3 may be varied at the will of the player so as to cause the duck to travel fast or slow and also the track may be moved up and down, quickly or slowly to cause the duck to move at a rapid or slow pace over the various raised portions 22 which may be any suitable height and any desired number. In case the duck is caused to travel too fast or is caused to oscillate too much, the wheel 14 will strike the board or runway 2 and as the duck sways forward, ring 15 will be raised and the egg 18 thrown off. When this occurs before the



duck has reached the forward end of the runway the player loses.

To win the race, it is necessary for the player to cause his duck to travel the full length of the tracks 3 and to cause the egg on this duck to be discharged into the nest or cup 24 first. If the player operates the duck properly, it will move downwardly in a proper manner with the egg on the head until the wheel 14 carried by the rod 12 will strike the inclined section 25 (Fig. 5) whereupon the rod 12 will be gradually raised and cause the egg to be discharged and when this occurs the egg will be discharged directly into the nest 24. The weight of the egg in striking the spring contact 26 will cause the same to move down and engage the stationary contact 27 whereby the circuit of one of the numbers on the annunciator 2 will be closed and that particular number caused to drop into view. In Figure 2, the number "9" has been shown which would indicate that the egg was first discharged into the cup or nest 24 connected up with number 9 of the annunciator.

When the grip 19 is pulled forwardly and downwardly the grip lever 20 will be swung forwardly on its pivotal support 28 and the wheel 29 will move over the inclined surface 30 as this wheel and the rod 31 carrying the same is moved gradually downward. The rod 31 (Figure 3) is slidingly fitted into a tubular member 32 but is locked against accidental movement by a set screw 33 whereby the rod will move upwardly and downwardly with the tubular member 32. The set screw 33 and the sliding feature of the rod 31 is to permit of adjustment of the various parts. The tubular member 32 is guided by suitable brackets 34 and 35 (Fig. 1) while the lower end carries a pin 36 extending through the slot 37 and one end of the walking beam or power bar 38. This bar is pivotally mounted at 39 and at the end opposite slot 37 is pivotally connected with the link 31.

Springs 40 and 41 are positioned to act on the power bar 38 to hold the same normally in the position shown in Figure 1 but when the tubular member 32 is moved downwardly, spring 40 is compressed and the track 3 is elevated at the rear. The runway 2 on which track 3 is mounted is pivotally connected or hinged to a suitable support 42 in any desired manner, said support preferably being connected with a wall 43 which hides the mechanism in back of said wall from the players. Preferably, the tubular members 32 are solid for part of their length though this is not absolutely necessary. Each of the members 32 is provided with a notch 44 which is adapted to receive one of the links 45 pivotally connected to the front wall 46 of the counter 47. The bar 48 connects all of the links 45 so that they may be

moved into and out of the notches 44 simultaneously. The bar 48 is pivotally connected at 49 to a lever 50 pivotally mounted in a support 51 and carrying a catch 52 adapted to snap into the notch 53 of the segment 54 which moves over to that position.

Whenever it is desired to lock the members 32 against movement, the attendant grasps lever 50 and pulls the same over until catch 52 snaps into the notch 53 whereupon all of the links 45 will be moved and caused to fit into the various notches 44. This movement is carried on against the action of a suitable retractile spring 55. The lever 50 is also connected with the core 56 of the solenoid 57 whereby whenever said solenoid is energized the lever is pulled so as to move the links 45 into engagement with the notches 44. The lever 45 is provided with an insulating block 58 adapted to engage the contact switch 59 and move the same to the dotted position shown in Figures 3 and 8 while the metallic part of the lever 50 engages the stationary contact 60. One side of the battery or source of current 61 is connected to lever 50 while the opposite side is connected through wire 61 with the solenoid 57 and said solenoid in turn is connected with wire 63 which is connected with contact 60. When lever 50 is moved over into engagement with the contact 60, the circuit of the source of current 61 will be closed and maintained closed until manually opened. This circuit may be closed by moving the lever 50 manually or may be closed by the actuation of the solenoid through current supplied from another circuit, namely, from one of the circuits including the contacts 26 and 27 of the cup or nest 24.

In the diagram shown in Figure 8, it will be noted that whenever an egg is dropped into the first cup 24, the circuit will be closed and the number in the section 24' of the annunciator 2 will drop. This circuit will, of course, remain closed until manually opened by moving the egg from cup 24. When the egg is deposited in the first cup 24, the current will flow from the battery or other source 61 through wire 64 to the stationary contact 27, contact 26, wire 65, windings of the section 24', wire 66, wire 67, switch 59, contact 60, wire 63, solenoid 57 and wire 62 back to battery 61. It will thus be seen that when the egg is deposited in the first cup 24, a number in section 24' will be dropped for giving a signal and in addition current will be supplied to the solenoid 57 as switch 59 is normally closed. This will cause the solenoid to immediately pull upon the lever 50 and swing the same over until catch 52 snaps into the notch 53. As the lever moves to this position, the switch 59 will be opened and lever 50 will contact with contact post 60 for maintaining the circuit

closed. The switch 56 is positioned so that the arm 50 will engage contact 60 before the catch 52 ordinarily snaps into notch 53. The contact post 60 is preferably resilient so as to move over as the lever 50 continues to move so that catch 52 may engage the notch 53. This arrangement is necessary because when the solenoid operates upon the deposit of the first egg in one of the cups 24, some of the notches 44 may be out of line with the links 45 and, consequently, the full movement of the lever 50 cannot be given until these notches line up. The circuit, of course, will be closed when an egg is deposited in any of the cups 24 and the solenoid 57 will act as just described.

By this construction and arrangement, it will be noted that the device may be locked automatically or manually. When the various members 32 have been locked as just described, the power bar 38 will be in the position shown in Figure 1 and, consequently, the various ducks will immediately gravitate toward the rear.

In the preferred form of the invention, the members 32 and the power bar 38 are moved by swinging the grip lever 30 downwardly but if desired a horizontally rotatable wheel 68 could be used and a track having suitable depressed portions 69 arranged on the lower surface thereof whereby as the wheel is rotated the members 32 will be depressed. By holding the depressed portions 69 in engagement with the wheels 29 and members 32, said members will be maintained depressed and the rear of the runway 2 held elevated causing the duck to automatically move forward. In order that the duck may move at a high rate of speed or more easily move over the raised portions of track 3, the runway and track are swung upwardly and continually. This must be done with care and considerable skill in order to secure the best results while at the same time avoiding the loss of the egg 18 by reason of the wheel 14 (Fig. 6) striking the runway 2.

It will be noted that when the first egg is deposited in one of the cups or nests 24, the circuit of solenoid 57 will be closed and the lever 50 immediately moved over whereby the circuits of all of the cups or nests 24 will be opened by the opening of the switch 59. This will prevent more than one section of the annunciator to be operated at a time but, consequently, will correctly indicate the winner. The remaining eggs may be discharged into the various cups by continually holding down the various members 32 but these latter eggs will not produce a registration or dropping of the annunciator.

What we claim is:—

1. An amusement device of the character described comprising a traveling member, a track for said traveling member, a projectile carried by said traveling member, manually

actuated means for controlling the movement of said traveling member, a signal member, and an electric circuit for operating said signal member, said electric circuit including a pair of contacts adapted to be closed by said projectile when discharged by said traveling member at the proper point.

2. An amusement device comprising a swinging track, a traveling member mounted on said track and adapted to move from one end of the track to the other as the track is swung upwardly and downwardly, manually actuated means for swinging said track, a projectile adapted to be projected to a given point by said traveling member when moved to one end of said track, a signal member, and an electric circuit for said signal member including contacts positioned at the point of discharge of said projectile whereby when said projectile is discharged the contacts will be closed for closing the circuit of said signal member.

3. In an amusement device of the character described, a pivotally mounted track, manually actuated means for swinging said track so that one end will be higher than the other, a wheeled member mounted on said track and adapted to move from one end to the other of the track, a projectile carried by said member, means for causing said projectile to be discharged from said member when the member reaches one end of said track, a signal member, and means actuated by the projectile for causing the signal member to be operated when the projectile has been discharged.

4. In an amusement device of the character described, a tiltable track, a member in the form of a duck having a pair of wheels mounted on said track, a projectile in the form of an egg carried by the head of said duck, a discharge member carried by the duck for throwing the egg therefrom, and means associated with the track at one end thereof for causing the egg to be discharged at a given point.

5. In a game of the character described, a swinging track, an article on said track provided with a pair of traction wheels whereby when the track is moved to a given position the article will move down to one end of the track, a projectile carried by said article, a ring for receiving said projectile and holding the same in place, a reciprocating rod pivotally connected with said ring, a traction member carried by said rod whereby when said member tilts to a predetermined extent the rod will engage part of the track and raise the ring for discharging the projectile, and means arranged adjacent one end of the track for engaging the wheel on the rod for discharging the projectile at a desired point.

6. In an amusement device of the char-



acter described, a plurality of cups, a pair of spaced contacts arranged in said cups, one of said contacts being resilient and capable of engagement with the other contact, a runway extending from each of said cups, each of said runways being provided with a double railed track, a traveling member provided with a pair of wheels resting on said rails for each runway, manually actuated means for moving said runway upwardly and downwardly at one end whereby the runway and the tracks carried thereby may be elevated at the end opposite said cups for causing said members to move under the action of gravity toward the cups, a projectile carried by each of said members, means for causing the projectile to be discharged as it approaches said cups whereby the projectile will fall into the cups and cause said contacts to engage a signal member, and an electrical circuit for the signal member including said contacts.

7. In an amusement device of the character described, a plurality of receptacles arranged in a row, a runway extending from each of said receptacles, each of said runways being pivotally mounted near the receptacles and free at the opposite end, manually actuated means for moving upwardly and downwardly said free end, a plurality of rails arranged on each of said runways,

a traveling member having a pair of side wheels resting on said rails, said wheels being so positioned as to cause the traveling member to swing, a projectile carried by said traveling member, and means for automatically causing the projectile to be thrown off the traveling member as it approaches the receptacles whereby it is discharged in said receptacles.

8. In an amusement device of the character described, a plurality of cups, a runway extending from each of said cups, said runways being pivotally supported adjacent the cups and free at the opposite end, each of said runways having a link connected thereto at the front end, a power bar pivotally connected with each of said links, means for pivotally supporting the power bar intermediate its end, a reciprocating member pivotally connected to the power bar at the end opposite said link, and manually actuated means for moving said reciprocating member downwardly whereby said runway at the free end will be moved upwardly, a traveling member arranged on said runway, and a projectile carried by the traveling member adapted to fall into said cups when the traveling member reaches the end of its travel toward the cup.

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May 31, 1927.

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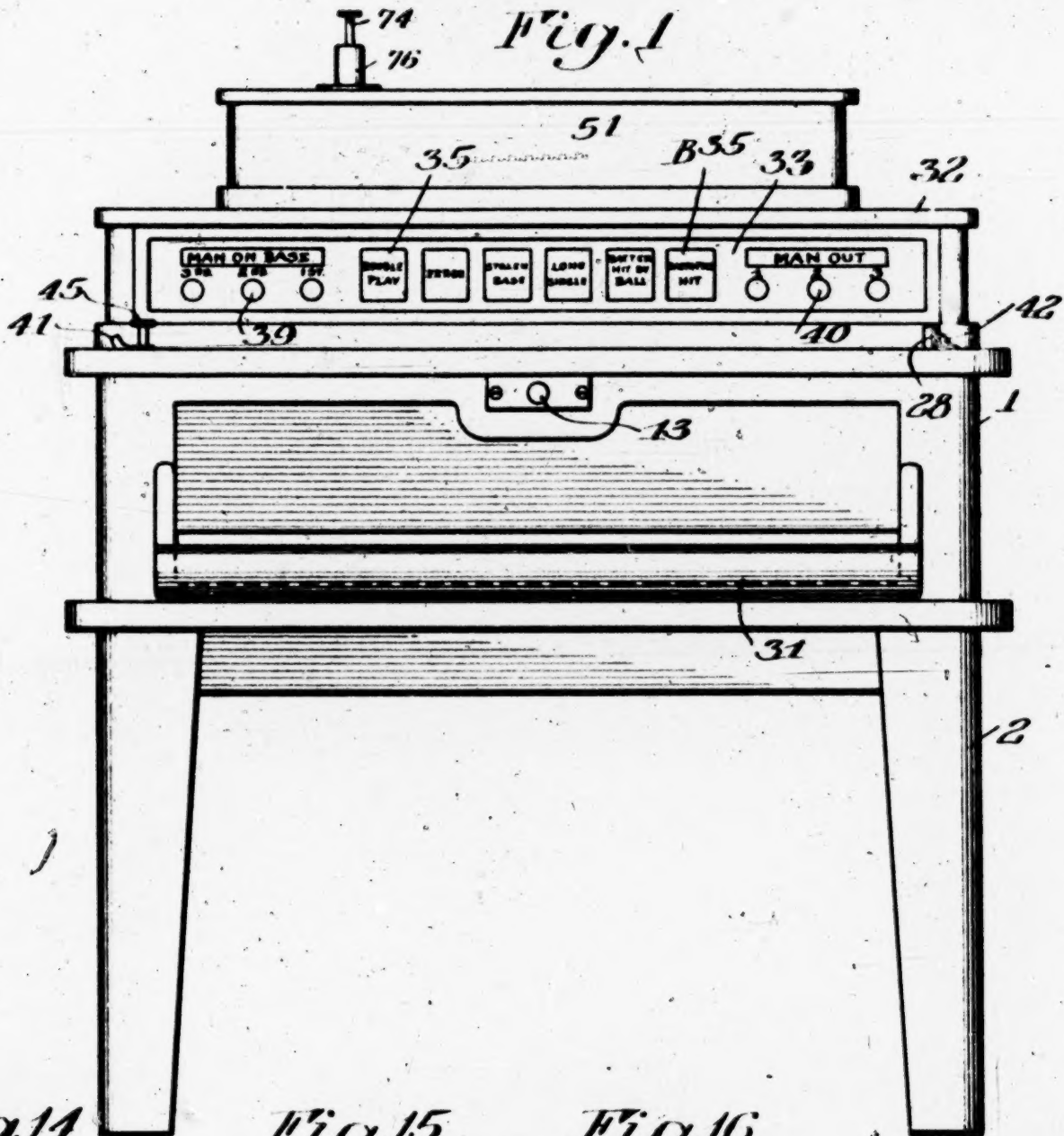
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GAME APPARATUS

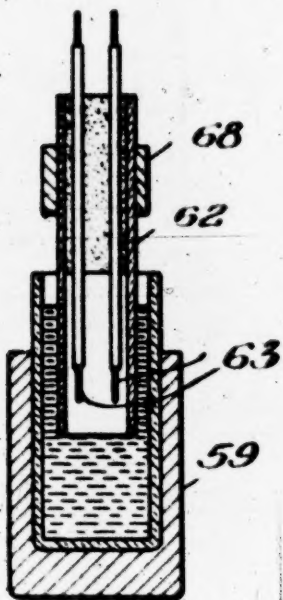
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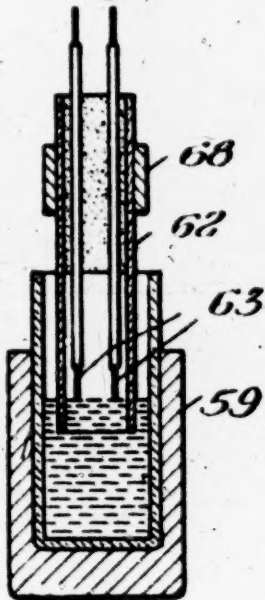
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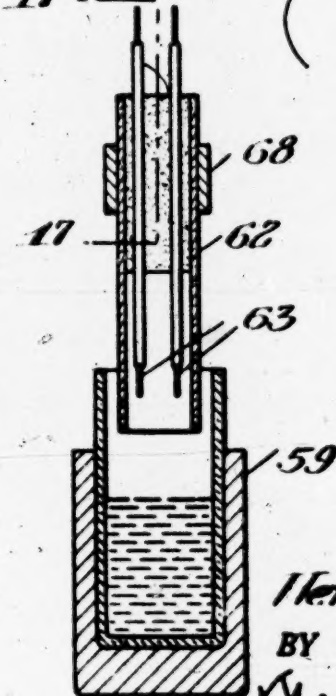
*Fig. 14*



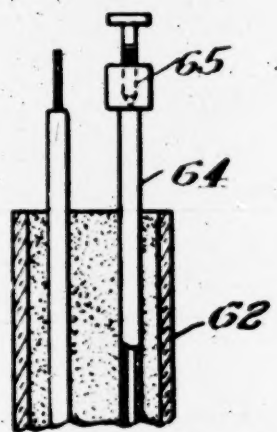
*Fig. 15*



*Fig. 16*



*Fig. 17*



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GAME APPARATUS

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Fig. 2

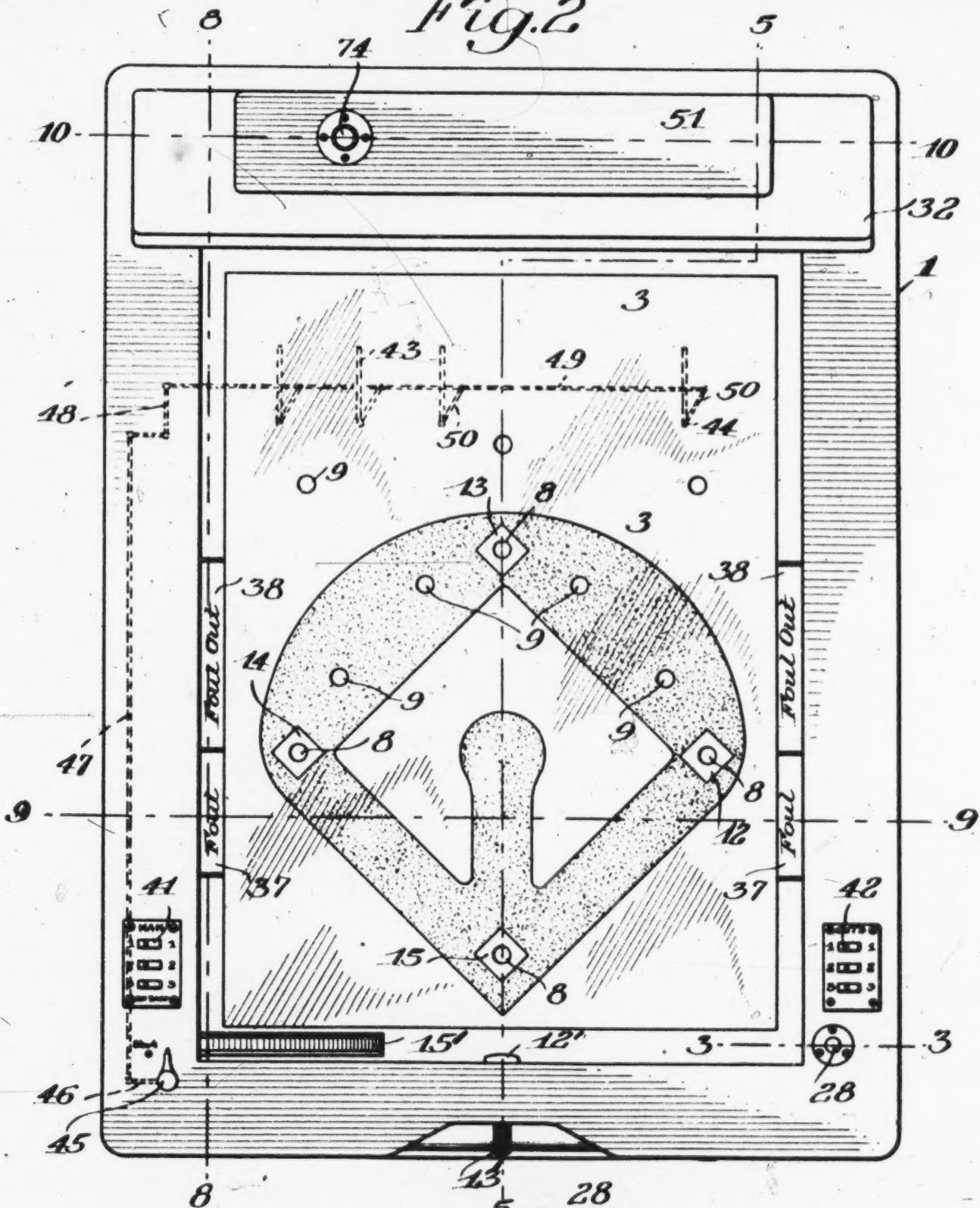
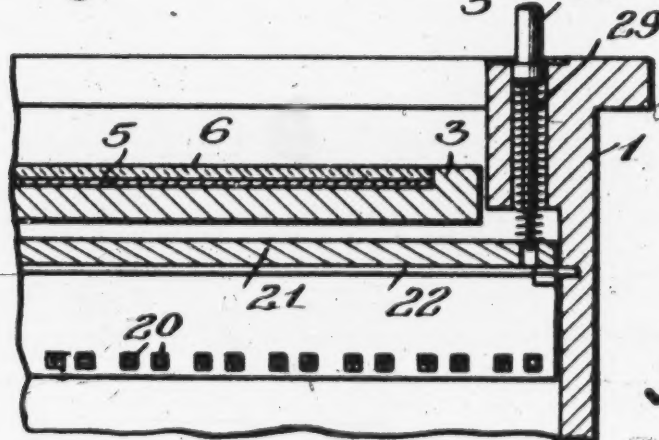


Fig. 3



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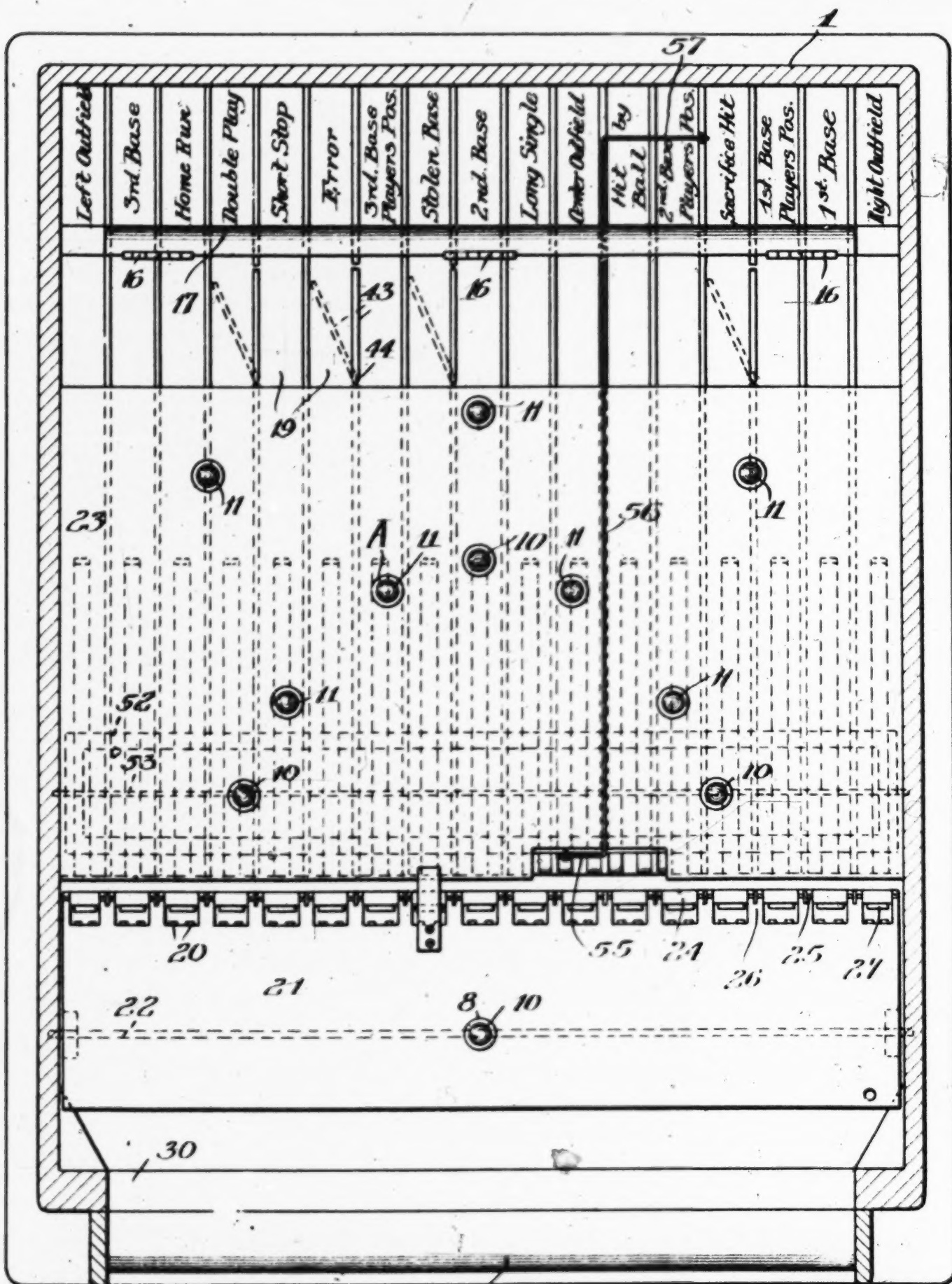


Fig. 4

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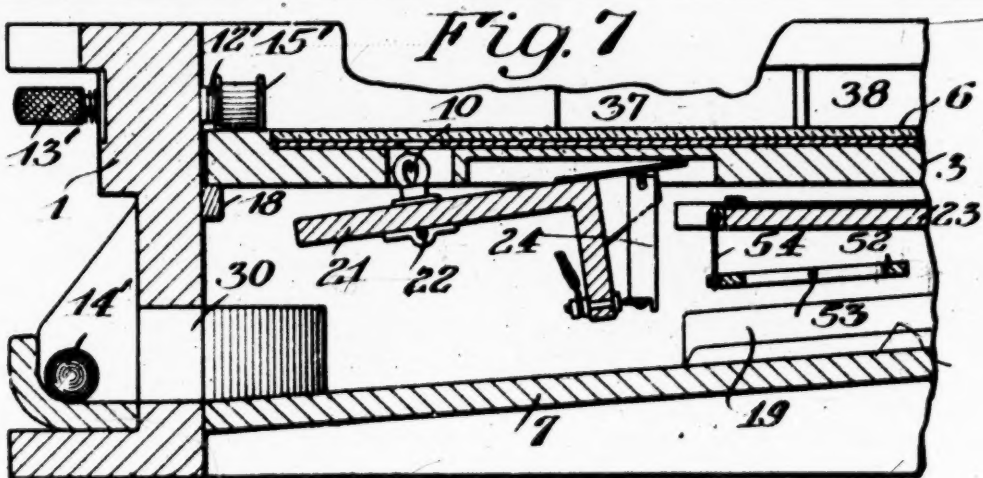
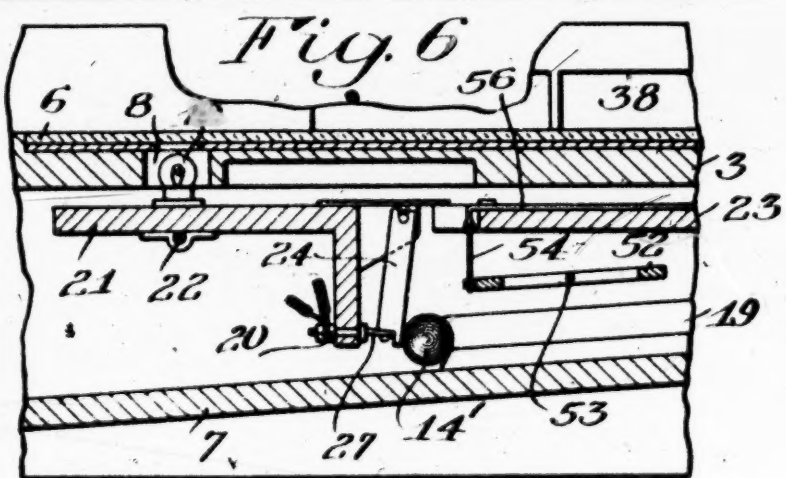
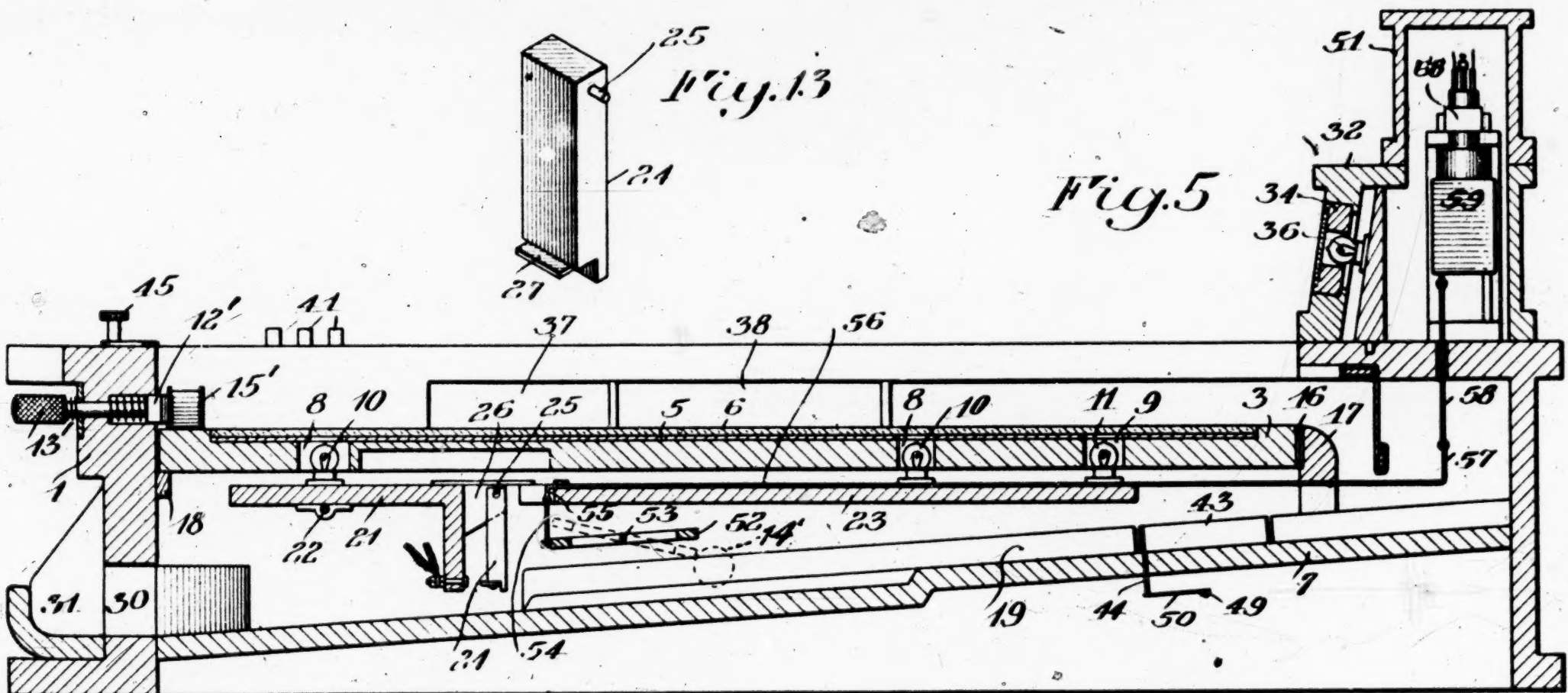
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7 Sheets-Sheet 4



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1,630,869

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Fig. 8

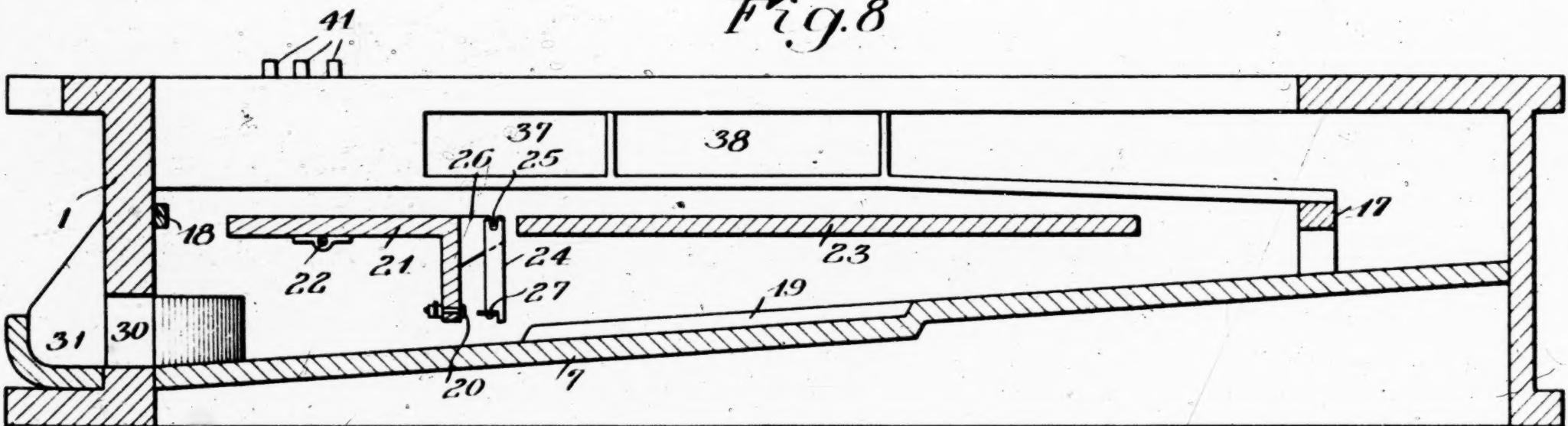
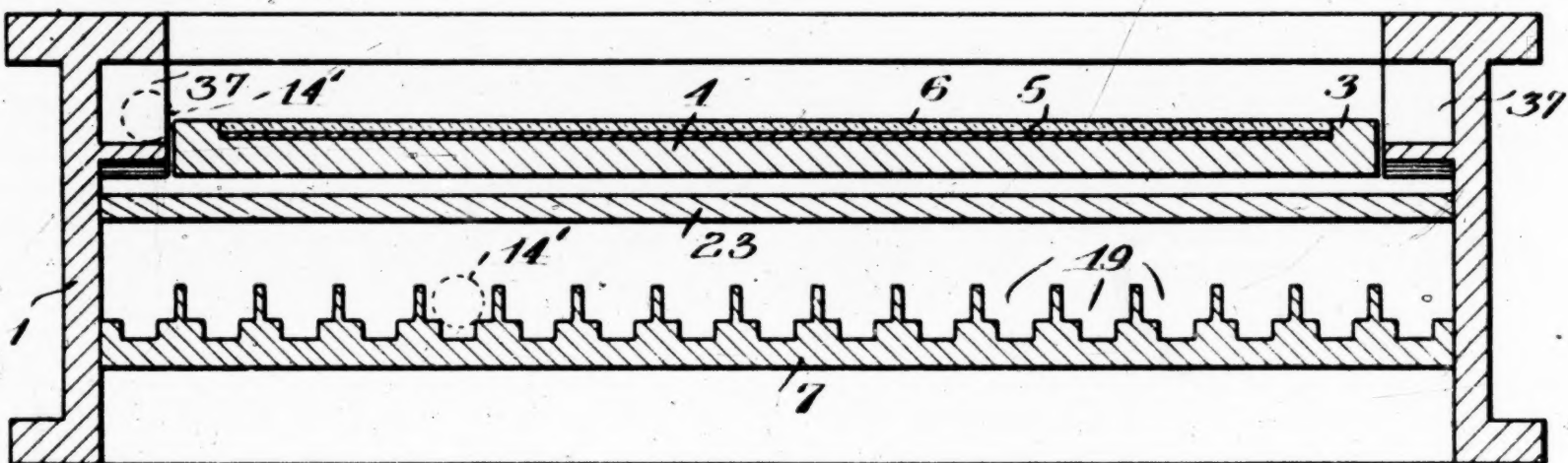


Fig. 9



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GAME APPARATUS

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Fig. 10

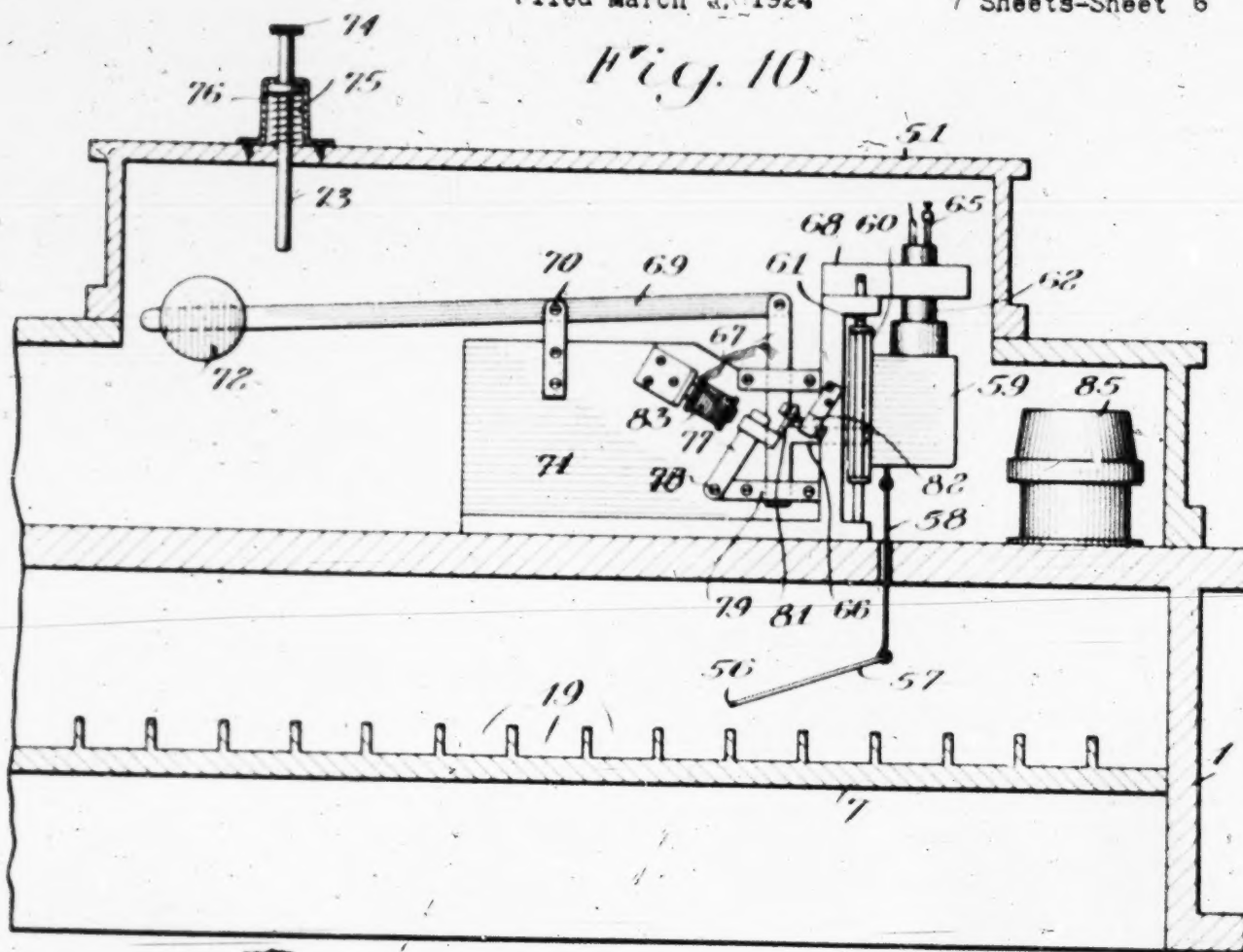
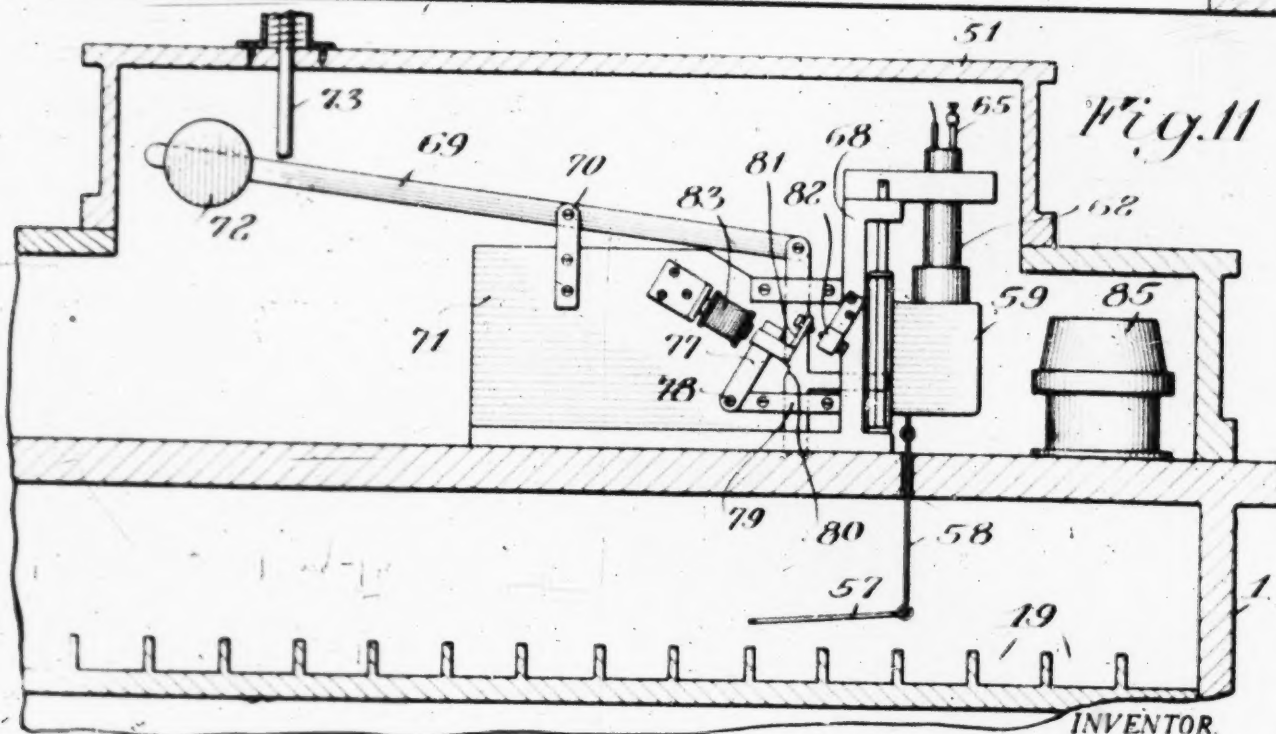


Fig. 11



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## UNITED STATES PATENT OFFICE.

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## GAME APPARATUS.

Application filed March 5, 1924. Serial No. 697,157.

My present invention relates to games and toys and more particularly to game apparatus adapted to be played in simulation of the game of baseball and it has for its object to provide a simple, efficient and convenient apparatus of this kind that will afford the variety of plays occurring in the real game of baseball and means for accurately indicating and recording them. A further object of the invention is to provide an apparatus of this nature that may be played under the supervision of an attendant for a prescribed fee with an automatically timed period of play. To these and other ends the invention resides in certain improvements and combinations of parts all as will be hereinafter more fully described, the novel features being pointed out in the claims at the end of the specification.

In the drawings:

Figure 1 is a front elevation of a game apparatus constructed in accordance with and illustrating one embodiment of my invention;

Figure 2 is a top plan view of the playing table showing the ball ground represented thereon;

Figure 3 is a fragmentary slightly enlarged sectional view through a resetting device on the line 3—3 of Figure 2;

Figure 4 is a horizontal sectional view through the table portion of the apparatus below the playing field showing the runways through which the different plays are made and registered;

Figure 5 is a longitudinal enlarged section taken on the line 5—5 of Figure 2;

Figure 6 is a fragmentary view showing a changed position of certain parts appearing in Figure 5;

Figure 7 is another fragmentary view showing another position of the parts appearing in Figures 5 and 6;

Figure 8 is a slightly enlarged longitudinal section taken on the line 8—8 of Figure 2;

Figure 9 is a transverse section taken on the line 9—9 of Figure 2;

Figure 10 is a transverse section slightly enlarged taken on the line 10—10 of Figure 2;

Figure 11 is a fragmentary view similar to Figure 10 but showing the parts in another position;

Figure 12 is a diagrammatic view of the

circuit arrangements of the electrical system;

Figure 13 is a detail perspective view of one of the switch elements;

Figure 14 is a detail vertical sectional view through the time controlled circuit closer;

Figure 15 is a similar view showing the parts in another position;

Figure 16 is a similar view showing the parts in still a third position and

Figure 17 is an enlarged fragmentary section on the line 17—17 of Figure 16.

Similar reference numerals throughout the several views indicate the same parts.

I will first give a general description of the nature of my invention to the extent of explaining the manner in which the playing of a game of baseball is simulated on the apparatus shown. The latter is in the nature of a table having a playing field thereon over which a ball is fired by a projector that requires a certain skill on the part of the player to operate. Beneath the table are a number of runways into which the ball falls from the far end and which represent different plays on a baseball field. Each runway is provided with an individual circuit closing device adapted to be actuated by the ball. These respectively, illuminate various lamps arranged on the playing field to designate the players' positions and also arranged on a board that indicates the different plays through the illumination of the lamps. It is intended that the apparatus, in its preferred form, shall be used for hire under the supervision of an attendant for which purpose an automatic timing device is provided that automatically traps the ball and disconnects the source of electrical energy at the termination of a predetermined period.

Referring more particularly to the drawings 1 indicates a table like frame supported at a suitable height on legs 2. The frame constitutes a well within which the game board and various working parts are located (Figure 8). The game board is best shown in Figures 2, 4 and 9 where it is indicated at 3, it being omitted from the showing of Figure 8. It preferably consists of a bed plate 4 on which is laid a picture 5 representing a base ball field and covered with a plate of glass 6, the glass and picture being set into the bed plate to lie flush therewith. It is suitably supported in the well of the frame in spaced relationship to the bottom 7 of the



latter which is inclined and runs from end to end while the game board terminates short of the rear end of the frame. The board and picture, beneath the glass, are provided with openings 8 and 9 provided with electric lamps 10 and 11 (Figure 5) which show through the glass when illuminated. The openings 8 are coincident with the designation of the bases on the picture of the playing field the first base being indicated at 12, second base at 13, third base at 14 and home plate at 15. The lamps 10 are white while the lamps 11 are red, the latter indicating the players' positions in the outfield. The operating arrangements hereinafter described are such that the white lights 10 in the openings 8 of the bases are illuminated to show the progress of a player around the bases while the red lights 11 in the openings 9 indicate where plays are stopped that is, where a put-out is made.

At the front of the game board is a spring actuate projector 12 guided in the frame 1 and having an operating knob 13 which when drawn out and released is adapted to strike a ball 14 rolled down a track 15 in a relatively transverse path and shoot it across the board 3. The latter as shown in Figure 5 is hinged at the front end at 16 to a bridge piece 17 spanning the bottom 7 while the rear end of the board rests on a cleat 18. As before mentioned, the game board is shorter than the frame 1, the bridge piece 17 being located at a distance from the front wall thereof so that the ball is permitted to roll off of the front end of the board and over the bridge piece and fall upon the inclined bottom 7.

This bottom 7 of the well frame is provided with a plurality of runways 19 best shown in Figures 5 and 9 and into one of which the ball falls in case it reaches the end of the board. Each one of these runways represents a play in the game of baseball and are so entitled on Figure 4 for convenience in reading the drawings. At the foot of each runway, that is, at the lower end toward the front of the machine is a circuit terminal or pair of terminals 20 arranged on an L-shaped insulating bracket 21 mounted to rock on a transverse shaft 22. The home plate light 10 is carried on this bracket near its pivot while the other lamps are carried on a fixed platform 23. In front of each pair of circuit terminals 20 is a pendulous switch member or circuit closer 24 one of which is shown in detail in Figure 13. They are hung on trunnions 25 having bearings in the small bracket plates shown at 26 carried on the front of the bracket 21 and are provided with metal plates 27 adapted to engage the contact members 20 and close the circuit through them, the members 24 being otherwise preferably composed of wood. Each such member hangs in the path of the

ball 14 as it rolls down the runway and as it strikes the switch it closes it and is itself halted as shown in Figure 6, the normal position of the switch being shown in Figure 5. This illuminates the appropriate lamp and the result of the play is made known. To release the ball, the swinging bracket 21 carrying the switch members 24 is raised to the position of Figure 7. This is done by means of a push button 28 arranged in the top of the frame 1 at the front of the apparatus conveniently for the operator. This is in the form of a plunger having a surrounding compression spring 29 through which it is returned and which rests on the bracket 21 in such way that the plunger imparts a tilting pressure to the bracket through the spring and thus prevents the operator from operating it too harshly. After the ball is released it rolls down the bottom 7 and emerges through an opening 30 in the frame 1 into an exterior trough 31 on the exterior of the frame from which it may be picked up by the operator and used over again.

Besides controlling the circuits of the lamps 10 and 11, the switches 24 close contacts 20 that indicate plays other than those that can be depicted on the playing field. Referring to Figures 1 and 5, a raised casing 32 at the rear end of the table contains a front panel 34 provided with a plurality of windows 35 behind which are lamps 36 each one of which is on one of the runway circuits adapted to be closed at 20. These are actually labeled "Double play" "Error," "Stolen base," etc., as shown and when the ball rolls down the corresponding runway it registers one of these plays by lighting the lamp. If it lights one of the white lights 10 on the bases an advancement of the runner to that point is indicated while if one of the red lights 11 in the players' positions is lighted it indicates that the player has been stopped or a put-out made at that particular point as before described.

Referring more particularly to Figures 2 and 9, I provide in each side wall of the frame 1 a small pocket 37 and a larger pocket 38 the bottoms of which are slightly below the board 3 and in which the ball may be trapped if it is projected off at an angle. The one counts merely as a "foul" and the other as an "out" as indicated though no lights need be used in this connection.

The casing 32 is also provided with three indicator apertures and lamps 39 for keeping count of the number of men on bases following a play and with three indicator apertures and lamps 40 for keeping count of the number of outs. These lights are turned on manually to burn during the inning and are respectively in the circuits of ordinary hand operated switches 41 and 42 arranged conveniently on the frame 1.

It is obvious that certain plays that are provided for cannot be made at the beginning of an inning before there is a man on base as, for instance, a "Double play," "Stolen base" etc. I therefore provide in connection with the runways corresponding to these barriers 43 (Figures 4 and 5) pivoted at 44 to deflect the ball into an adjacent runway instead. These are moved to operative position at the start of the inning by means of a rotary thumb piece 45 on the frame 1 having an arm 46 connected to a pull rod 47. This latter is in turn connected to a bell crank lever 48 operating a pull rod 49 connected to levers 50 on the barriers 43. After the game has progressed sufficiently, the operating member 45 is turned back and the barriers straightened out so that the extra plays may be included.

It is contemplated that the game in the embodiment shown may be hired for use in the manner of a pool or billiard table under the supervision of an attendant. A stated sum would be paid for the use of the game apparatus for a specified time sufficient to complete the nine innings of a ball game. In order to stop the play at the termination of this period I provide an automatic timing device that cuts off the source of electric current at the proper time. This is housed partly within the casing 32 and partly within an extension 51 thereof. In addition to breaking the operating circuit it also actuates means for trapping the playing ball. This last mentioned means embodies a tilting frame 52 (Figure 5) pivoted at 53 and connected by a link 54 with an arm 55 on a long crank rod 56 supported on the platform 23. An arm 57 at the opposite end of the crank is connected by a link 58 with a mercury cup 59 so that as the latter is raised and lowered the frame 52 is oscillated between the full line playing position of Figure 5 and the dotted line operative position in which it halts the ball in any one of the runways 19 before it can reach the switch member 24.

Referring to Figures 10 and 11 the mercury cup 59 is slidable vertically through an attached guide bracket 60 on a rod 61. Projecting into the cup from above is a fixed sealed tube 62 having circuit terminal wires 63 exposed on the interior thereof. When the cup 59 is raised sufficiently the mercury therein surrounds the tube as shown in Figure 14 but the air trap therein prevents it from running up into the interior of the tube and closing the circuit through the terminals 63. A vent tube 64 (Figure 17) is, however, provided and the escape of air there-through controlled by a needle valve 65. The slow escape of the air through this tube finally allows the mercury to reach the terminal and close the circuit.

The mercury cup 59 is carried on an arm

66 of a link 67 suitably guided in the bracket 68 that carries the sealed tube 62 which link is pivoted to a lever 69 pivoted at 70 to a plate 71 on the bracket and counterweighted at 72. The counterweight tends to raise the mercury cup 59 against the air pressure and hold it there when the lever is depressed but in the normal position of Figure 11 the mercury cup is lowered being heavier than the counterweight. The lever 69 is depressed by means of a push rod 73 terminating in an exterior operating button 74 and returned by a spring 75 in a casing 76 in which the push rod is guided. This depression of the lever to the position of Figure 10 carries the cup 59 up to its extreme elevated position of air compression in the terminal tube where it is held by a detent 77 pivoted at 78 to an arm 79 of the bracket said detent engaging in a notch 80 in the link 67. A stop arm 81 on the detent 77 cooperating with a fixed stop arm 82 on the bracket 68 through the medium of the set screws shown determines the extent of engagement and point of release of the detent. The detent is withdrawn by a solenoid 83 the circuit of which is controlled by the terminals 63 in the mercury cup and therefore the closing of the circuit by the mercury drops the mercury cup and operates the frame 52 to trap the ball. The lowered position of the cup is shown in Figure 16. The set screws 84 of the detent 77 also constitute a switch or circuit breaker which controls all of the other operating circuits of the apparatus so that these are broken also when the mercury cup falls terminating the period of play. The circuit arrangements are shown diagrammatically in Figure 12 and are as follows:

The source of current is indicated at 85 as a transformer in which a lighting circuit voltage is reduced to the six or eight volts necessary to operate the apparatus. When the ball 14 closes the circuit through a pair of contacts 20, say the short stop position indicated at A, it runs from the transformer 85 through wire 86, contacts 84, wire 87, wire 88, wire 89, light A<sup>11</sup>, wire 90, contacts A<sup>20</sup>, wire 91, wire 92 and back to the transformer indicating that the play has been stopped and a put-out made at the short stop position. Thus, when the circuit is broken at 84 by the retraction of the detent 77 this illumination of the lamp A<sup>11</sup> is prevented as well as the trapping of the ball. In the same manner a play off the playing field such as a sacrifice hit, registered at B<sup>11</sup> is indicated by the circuit transformer 85, wire 86, circuit breaker 84, wire 87, wire 93, lamp B<sup>11</sup>, wire 94, contacts G<sup>20</sup>, wire 95, wire 92 and back to the transformer.

When the timing device has operated the circuits are broken through the contacts 84 for the reason that a circuit is set up from transformer 85, wire 96, terminals 63, wire



27, solenoid 93, wire 98 and back to transformer 85. This breaks the circuit at 84 by causing the retraction of detent 77 by the energizing of solenoid 83 and also restores the mercury cup to the lowered position. The solenoid circuit is therefore opened at the terminals 63 and the apparatus is ready for resetting through the button 74.

I claim as my invention:

10 1. In a game apparatus, the combination with a playing field having electrically illuminated playing positions thereon including electric lamps, of switches in the circuits of said lamps and a projectile adapted  
15 to traverse the playing field and to subsequently gravitate to a position at which it will operate one of said switches, the latter forming a stop for the projectile.

2. In a game apparatus, the combination  
20 with a game board representing a base ball field, and a projectile adapted to be rolled upon the same, of a plurality of runways into which the projectile may fall by chance, a plurality of corresponding play indicators  
25 for the runways, and means actuated by the projectile while traversing the runway for operating said indicators, said means forming a stop for the projectile in the path of the runway.

3. In a game apparatus, the combination  
30 with a game board representing a base ball field, and a projectile adapted to be rolled upon the same, of a plurality of runways into which the projectile may fall by chance,  
35 a plurality of corresponding electrically operated play indicators located upon the field and circuit closers for the indicators arranged in the runways and adapted to be actuated by the projectile and to form stops  
40 for the latter.

4. In a game apparatus, the combination  
45 with a game board representing a base ball field, and a projectile adapted to traverse the same, of a plurality of runways into which the projectile may fall by chance, a plurality of corresponding electric lamps indicating upon the field various base ball  
50 plays corresponding to the runways, and circuit closers for the lamps arranged in the runways and adapted to be operated by the projectile and to form stops for the latter.

5. In a game apparatus, the combination  
55 with a game board representing a base ball field, and a projectile adapted to traverse the same, of a plurality of runways into which the projectile may fall by chance, a plurality of corresponding electric lamps arranged in the playing positions on the ball  
60 field, and circuit closers for the lamps arranged in the respective runways and adapted to be operated by the projectile.

6. In a game apparatus, the combination with a game board representing a base ball field, and a projectile adapted to be rolled

upon the same, of a plurality of runways beneath the field into which the projectile may fall by chance, a plurality of corresponding play indicators for the runways, means actuated by the projectile while traversing the  
70 runways for operating the indicators and adapted to trap the projectile and manually operable means for releasing the latter.

7. In a game apparatus, the combination  
75 with a game board representing a base ball field, and a projectile adapted to be rolled upon the same, of a plurality of runways beneath the field into which the projectile may fall by chance, a plurality of corresponding electrically operated play indicators for the  
80 runways, circuit terminals for the indicators, and a swinging circuit closer for each pair of such terminals arranged in each runway and adapted to be actuated by the projectile when it falls therein. 85

8. In a game apparatus, the combination  
110 with a game board representing a baseball field, and a projectile adapted to traverse the same and to fall from the far end thereof, means connected with the board for imparting a rolling movement to the projectile across the field, of a plurality of runways into which the projectile may fall by chance arranged beneath said game board, a plurality of corresponding play indicators for the  
115 runways and means actuated by the projectile for operating the indicators.

9. In a game apparatus, the combination  
120 with a game board representing a baseball field, and a projectile adapted to roll upon the same and to fall from the far end thereof, of a plurality of runways into which the projectile may fall by chance arranged beneath said game board, a plurality of corresponding play indicators for the runways embodying electric lamps arranged in playing  
125 positions on the game board and a circuit closer in each runway adapted to be actuated by the projectile to light one of the lamps.

10. In a game apparatus, the combination  
130 with a game board representing a baseball field, and a projectile adapted to roll upon the same and to fall from the far end thereof, of a plurality of runways into which the projectile may fall by chance arranged beneath said game board, a plurality of corresponding play indicators for the runways, comprising electric lamps arranged partly in playing positions on the game board and partly in another exposed position, and a circuit closer in each runway adapted to be  
135 actuated by the projectile to light one of the lamps.

11. In a game apparatus, the combination  
140 with a game board representing a baseball field, and a projectile adapted to roll upon the same and to fall from the far end thereof, of a plurality of runways into which the projectile may fall by chance arranged be-

neath said game board, a plurality of corresponding play indicators for the runways, embodying electric lamps, a tiltable frame carrying a plurality of pairs of circuit terminals for the respective lamps, and a swinging circuit closer on the frame for each pair of terminals and each runway adapted to be actuated by the projectile.

12. In a game apparatus, the combination with a game board representing a baseball field, and a projectile adapted to roll upon the same and to fall from the far end thereof, of a plurality of runways into which the projectile may fall by chance arranged beneath said game board, a plurality of corresponding play indicators for the runways embodying electric lamps, a tiltable frame carrying a plurality of pairs of circuit terminals for the respective lamps, a swinging circuit closer on the frame for each pair of terminals and each runway adapted to be actuated by the projectile and to be trapped thereby, and means for tilting the frame to release the projectile.

13. In a game apparatus, the combination with a game board, a projectile adapted to be rolled upon the same and runways into which the projectile is adapted to fall by chance, of a plurality of play indicators, operating means therefor adapted to be actuated by the projectile while in the respective runways and pockets arranged laterally

of the game board in which the projectile is adapted to be trapped when it traverses the latter at an angle.

14. In a game apparatus, the combination with a game board representing a base ball field and a projectile adapted to roll upon the same, of a plurality of runways into which the projectile may fall by chance, a plurality of corresponding play indicators for the runways, means actuated by the projectile in the runways for operating the indicators, means for blocking the projectile in the runways before it reaches the actuators and a time-controlled mechanism for operating the blocking means.

15. In a game apparatus, the combination with a game board representing a baseball field and a projectile adapted to traverse the same, of a plurality of electrical devices for indicating baseball plays and adapted to be actuated by the projectile, a circuit breaker for the circuits of said devices, and a timing device for operating the circuit breaker.

16. A game comprising an alley, a chute under said alley to receive a ball from the same, ball-receiving pockets at the lower end of said chute having different counting values, and ball-actuated indicating means for disclosing into which pocket the ball enters.

HERMAN STRINMETZ

H. J. BLACKMORE.  
RAIN SIGNAL.  
APPLICATION FILED SEPT. 5, 1917.

1,280,136.

Patented Oct. 1, 1918.

Fig. 1.

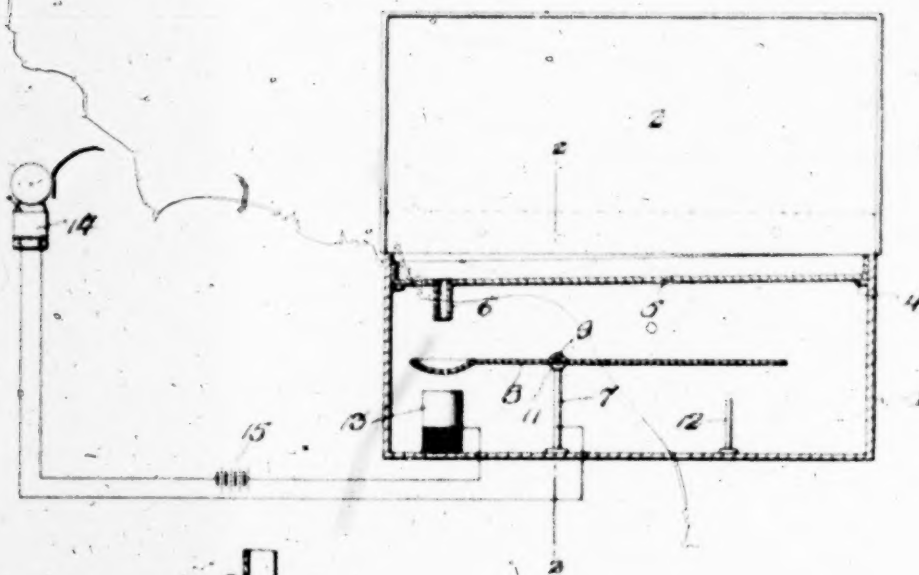


Fig. 2.

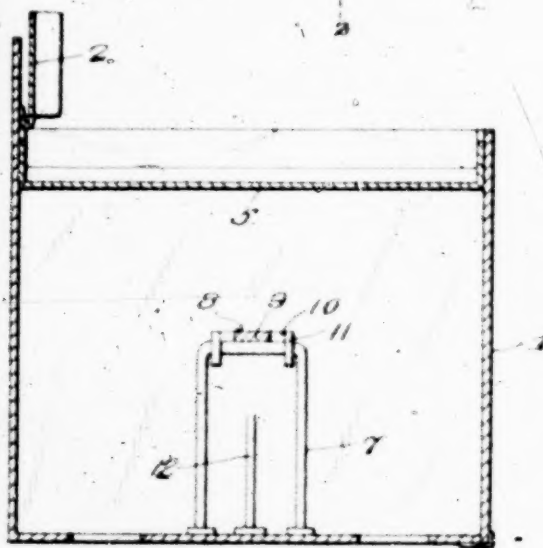
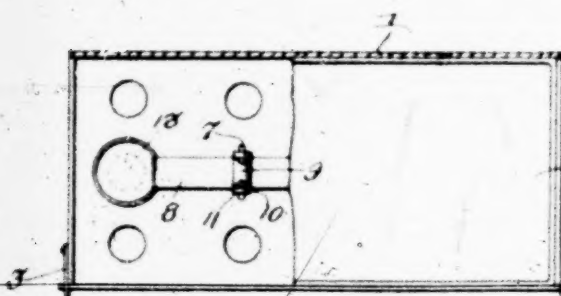


Fig. 3.



Inventor  
H. J. Blackmore,

Witnesses  
H. Crauford  
J. B. Middleton

By Victor J. Evans

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# UNITED STATES PATENT OFFICE.

HENRY J. BLACKMORE, OF INDIANAPOLIS, INDIANA.

## RAIN-SIGNAL.

1,280,136.

Specification of Letters Patent.

Patented Oct. 1, 1918.

Application filed September 5, 1917. Serial No. 189,806

### *To all whom it may concern:*

Be it known that I, HENRY JOHN BLACKMORE, a citizen of Newfoundland, residing at Indianapolis in the county of Marion and State of Indiana, have invented new and useful Improvements in Rain-Signals, of which the following is a specification.

This invention relates to new and useful improvements in rain indicators, and the principal object of the invention is to provide a device actuated by the rain water for sounding an alarm to notify the occupants of a residence that rain is falling so that they may close the windows and thus avoid damage from the rain.

The present invention is an improvement over the invention described in the application for Letters Patent filed August 7, 1917, Serial No. 184,934.

Another object of the invention is to provide a balanced member adapted to receive the rain water at one end thereof so that said end will be depressed to close an electric circuit to sound the alarm.

Another object of the invention is to provide a device of this character which is simple and durable in construction, reliable and efficient in operation and one which can be manufactured and placed upon the market at a minimum cost.

The invention also consists in certain other features of construction and in the combination and arrangement of the several parts, to be hereinafter fully described, illustrated in the accompanying drawings and specifically pointed out in the appended claim.

In describing my invention in detail, reference will be had to the accompanying drawings wherein like characters denote like or corresponding parts throughout the several views, and in which:—

Figure 1 is a vertical longitudinal section through the device and includes a diagrammatic representation of the electrical connections.

Fig. 2 is a section on line 2—2 of Fig. 1.

Fig. 3 is a plan view with parts broken away.

In these figures 1 indicates a casing having its bottom perforated and provided with a hinged cover 2. If desired this cover may be made to catch the rain and to direct it into the receptacle as described in my former application. I prefer to form the front of the case so that it may be detached

to give access to the interior of the casing and said front is held in position by the hooks 3 pivoted to the ends of the casing. If desired I may hinge said front to the bottom of the casing. The ends of the casing are provided with flanges 4 on their inner faces adjacent their upper ends to support the trough or tray 5 which is to catch the rain water as it falls. This trough is provided with an outlet tube 6 adjacent one end and the flange 4 at this end of the casing is on a lower plane than the other flange so as to hold the trough in a tilted position, thus directing the water to said outlet. The tray sits loosely on said flanges so that it may be lifted out when desired.

On the bottom of the casing I locate a standard 7 composed of two upright bars having their ends secured to the said bottom, and a cross bar connecting the upper ends of said upright bars. This standard supports a spoon shaped member 8 which is so proportioned as to balance itself on said standard. I prefer to form a depression 9 in the stem of said member and to form notches 10 in each end of said depression, said depression fitting over the cross bar of the standard. Lugs 11 are formed on the cross bar, one on each side of the spoon shaped member and engaging said notches to prevent lateral movement of said member. 12 indicates a pin for engaging the rear end of the stem of the spoon shaped member to limit the downward movement of said stem. Immediately under the bowl of the spoon shaped member and adjacent one end of the casing is located the contact 13 which is suitably insulated from the bottom of the casing to which it is secured. Said contact is provided with the usual form of electrode passing through the same and adapted to receive the usual connecting wire which leads to the alarm 14 which in turn is connected by suitable wires with the battery 15, connected in its turn by a suitable wire to the standard 7. The parts are so arranged that the bowl of the spoon member is directly under the lower end of the outlet tube of the tray.

With the parts in operative position and when the rain begins to fall, the tray will catch the water and it will flow from the tray through the outlet tube into the bowl of the spoon, thus the spoon will be tilted so that the bowl will engage with the contact thus completing the circuit and sounding

the alarm. The occupants of the dwelling will thus be notified that rain is falling so that they may close the windows to prevent damage to the contents of the dwelling. The device can then be thrown out of action by closing the cover, but first the bowl should be emptied of the water contained therein. This can easily be done by lifting the bowl out of the casing and emptying the water therefrom.

It is thought from the foregoing description that the advantages and novel features of my invention will be readily apparent.

I desire it to be understood that I may make slight changes in the construction and in the combination and arrangement of the

several parts, provided that such changes fall within the scope of the appended claim.

What is claimed is:—

In a device of the class described, a casing, a hinged top therefor, a hinged front, means for holding the front in position, a standard within the casing, a spoon shaped member balanced on said standard, an electric contact located under the bowl of said member, and a tray removably mounted in the top of the casing and having an outlet directly over the bowl of the spoon shaped member.

In testimony whereof I affix my signature.

HENRY J. BLACKMORE.



Sept. 25, 1928.

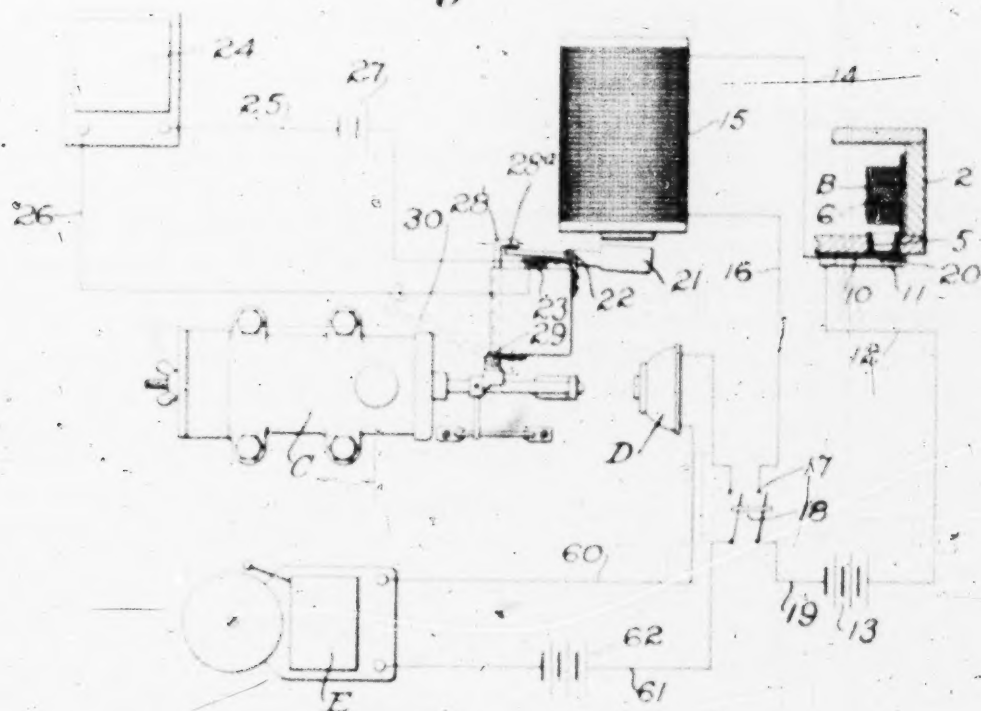
1,685,329

C. J. LYNCH  
ALARM MECHANISM

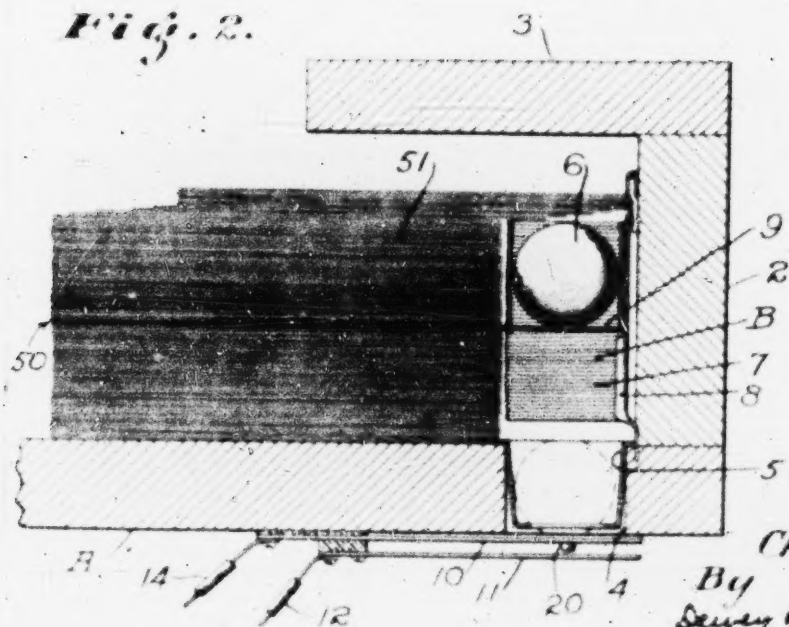
Filed Feb. 19, 1925

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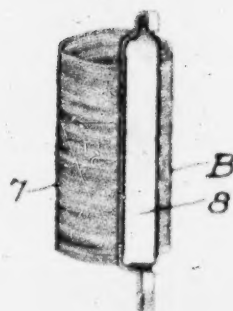
*Fig. 1.*



*Fig. 2.*



*Fig. 3.*



Inventor:  
Charles J. Lynch  
By  
Severy, Strong, Townsend & Loftis  
Attorneys

Sept. 25, 1928.

C. J. LYNCH

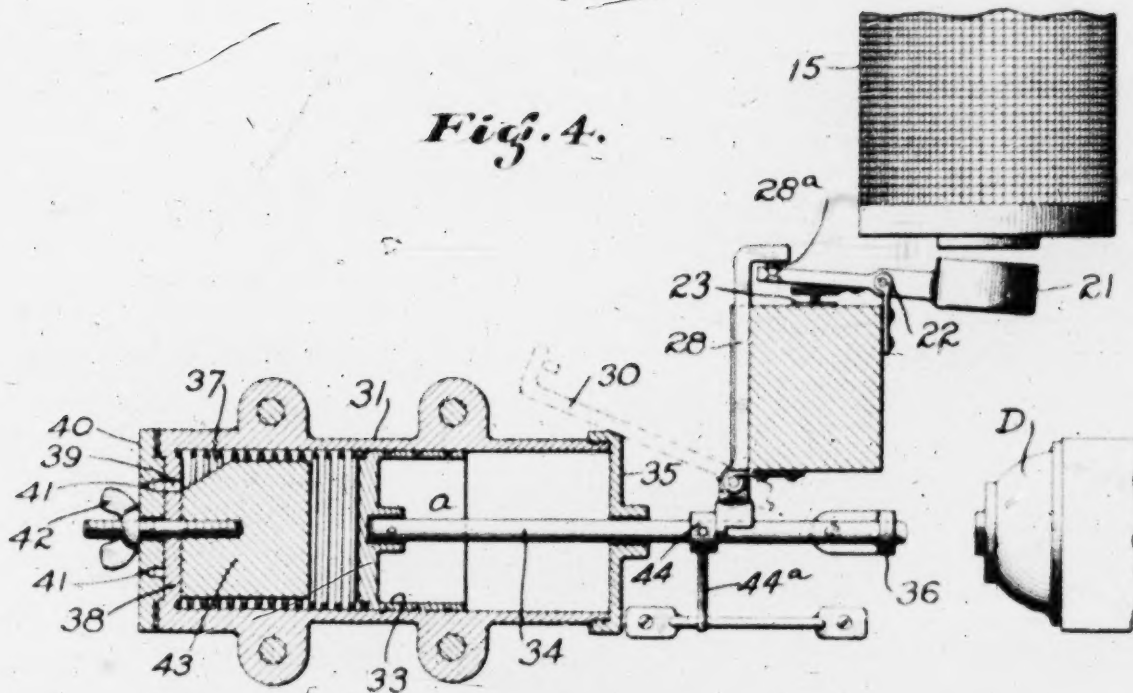
ALARM MECHANISM:

Filed Feb. 18, 1925

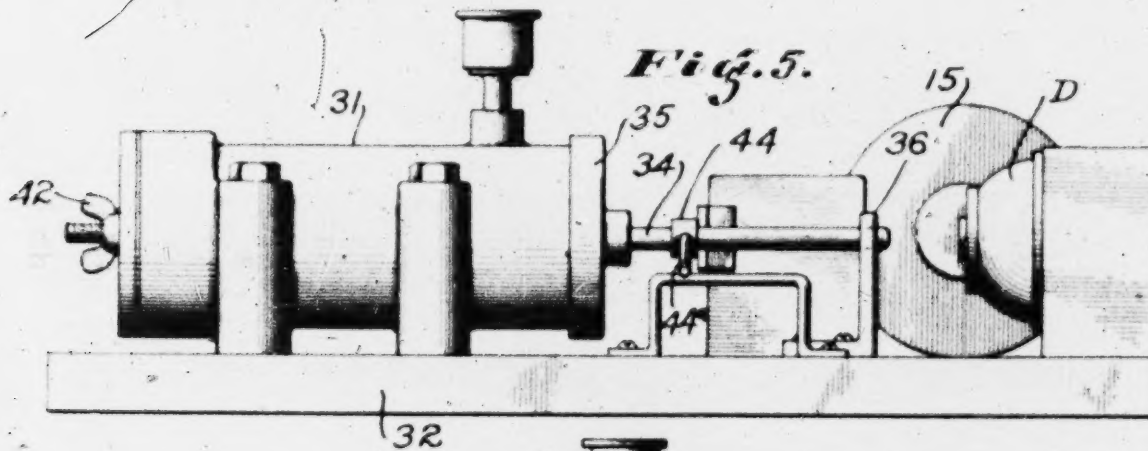
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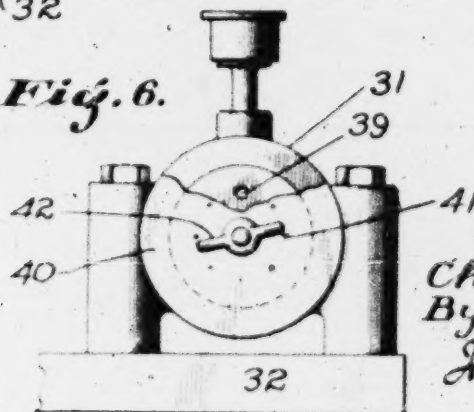
*Fig. 4.*



*Fig. 5.*



*Fig. 6.*



*Inventor:*  
*Charles J. Lynch*  
*By Dewey, Strong,*  
*Junsend & Loftis*  
*Attorneys.*

## UNITED STATES PATENT OFFICE.

CHARLES J. LYNCH, OF SAN FRANCISCO, CALIFORNIA.

## ALARM MECHANISM

Application filed February 18, 1925. Serial No. 9,949.

This invention relates to an alarm mechanism for cash drawers, tills and the like, and particularly to an alarm mechanism which is adapted for installation in cages, such as are used by paying tellers in banks and other institutions handling large sums of money.

The object of the present invention is to generally improve and simplify the construction and operation of alarm mechanisms of the character described; to provide an alarm mechanism which is particularly adapted for installation in tills containing paper currency; to provide an alarm mechanism which is actuated by the withdrawal of certain pieces of the currency only, thereby permitting an authorized person to withdraw currency without actuating the alarm mechanism, while an unauthorized person attempting to withdraw currency would be fairly certain to actuate the alarm mechanism; and further, to provide means whereby an alarm will not be given until after a predetermined period of time has lapsed, so as to give an authorized person time to render the alarm mechanism ineffective if he should actuate the same by inadvertence, mistake or otherwise.

One form which my invention may assume is exemplified in the following description and illustrated in the accompanying drawings, in which—

Fig. 1 is a diagrammatic view showing the installation of the alarm mechanism.

Fig. 2 is a longitudinal section of a paper currency till showing a portion of the alarm actuating mechanism.

Fig. 3 is a perspective view of the weight-containing receptacle.

Fig. 4 is a plan view in section showing the dash-pot and the mechanism actuated thereby.

Fig. 5 is a side elevation of the dash-pot and the mechanism actuated thereby.

Fig. 6 is an end view of the dash-pot.

Referring to the drawings in detail and particularly to Figs. 1, 2 and 3, A indicates the bottom section of a currency till, such as is used in banks and other institutions of a similar character, 2 indicates the rear end of the same, and 3 a cover section. Formed in the bottom section A is an opening 4 and mounted therein is a thimble-like receptacle 5 which is adapted to receive an actuating ball or weight 6 as will hereinafter be described.

Suitably secured to the end section 2 and disposed in alignment with the opening 5 is a

weight receptacle B. This receptacle consists of a helically wound coil of wire, such as shown at 7, which is soldered or otherwise secured to a supporting strip 8 which may be attached in any suitable manner to the end section 2 of the till. The individual coils are merely secured to the strip 8 at one point and their opposite sides are thus flexible and may be separated a sufficient distance to permit insertion of a piece of paper currency, said currency when inserted forming a temporary support for the ball or weight shown at 6 and the position of the currency when inserted being shown at 9.

Disposed below the opening 5 is a switch member consisting of two spring arms 10 and 11, the arm 11 being connected by a wire 12 with a battery 13, and arm 10 being connected by means of a wire 14 with one terminal of a magnet 15. The other terminal of the magnet is connected by a wire 16 with one contact 17 of a double-throw switch 18, the opposite terminal of the switch being connected with the battery 13 by means of a wire 19. Hence, if the paper currency in the till is withdrawn, weight 6 falls downwardly into the pocket 4 and thereby depresses arm 10, so that a circuit is made at the point 20. This circuit energizes the magnet 15, causing the same to attract an armature member 21, which is pivotally supported at the point indicated at 22. The opposite end of the armature closes a contact 23 and this in turn closes a circuit through a buzzer or bell 24, which circuit can be traced through wires 25, 26, contacts 23 and battery 27. The function of the bell or buzzer 24 will hereinafter be described.

Simultaneous with the closing of the contacts 23, a lever 28 is released. This lever is pivotally mounted at the point 29 and assumes the dotted line position indicated at 30 when released (see Figs. 1 and 4). The lever 28 actuates a dash-pot mechanism generally indicated at C and this in turn actuates a push button switch D and a final alarm bell E, all of which will further be described.

The dash-pot mechanism is perhaps best illustrated in Figs. 4 and 5. It consists of a cylinder 31 suitably secured on a base or support, as indicated at 32. Reciprocally mounted within the cylinder is a piston 33 which is connected to a rod 34. This rod passes through a head member 35 disposed at one end of the cylinder, and it also passes through a guide bearing 36.

The rod 34 is mounted in direct alignment



with the button of the switch D and as such closes a circuit through the switch D when the button is depressed.

The piston 33 is driven forwardly in the direction of arrow *a* by means of a compression spring 37 disposed within the cylinder and interposed between the piston and a head member 38. This head member has a single port formed therein, as shown at 39, and the amount of air passing through the port is regulated by an exterior valve disk 40. This valve disk has a series of perforations formed therein, as shown at 41. These perforations are graduated in size and by turning the valve disk a selected port may be moved into register with the port 39, the disk being secured when adjusted by means of a nut 42.

Mounted within the cylinder is a displacement block or head 43 which serves the function of reducing the quantity of air maintained within the cylinder to a minimum; that is, the head is slightly less in diameter than the interior diameter of the cylinder and as such leaves an annular space for the compression spring 37.

The action of the dash-pot mechanism is as follows: Mounted on the rod 34 is a stop lug 44 which normally engages the trip lever 28. If the trip lever is released and swings to the dotted line position shown at 30, it can readily be seen that the stop lug will be released and consequently the rod 34 and the piston carried thereby. The pressure exerted by the compression spring 37 will force the piston outwardly in the cylinder in the direction of arrow *a*, the speed or movement, however, being controlled by the amount of air admitted to the cylinder as the piston advances. For instance, if the head end 38 were entirely closed and no leakage took place around the piston, it is obvious that the piston would only move a short distance as a vacuum would be formed. In this instance a partial vacuum is formed, but it is constantly being relieved by the amount of air entering through the registering ports 39 and 41, and by bringing smaller or larger ports into register, practically any speed desired may be obtained; that is, the piston merely serves the function of a time-lag mechanism, as it is desired that the circuit through the push button D shall not be closed say within a period of six to ten seconds or whatever the case may be, as it sometimes happens that the paying teller or other authorized person might release the weight 6 through inadvertence or mistake and as a time period of six to ten seconds may be obtained by means of the dash-pot mechanism before the final alarm mechanism is actuated, it is possible for an authorized person to render the same inoperative.

The entire operation of the mechanism will now be described. The paying teller in filling the till with paper currency will insert a

few bills, for instance, up to the point indicated at 50. He will then slip a single bill in between the coils 7, so that it will form a false bottom within the coil, as indicated at 9. He will then place the weight 6 on top of this false bottom or temporary support and will finally place the bills which he intends to use on top of the inserted bill, as indicated at 51. During the day, bills will obviously be removed and replaced from time to time and the entire stack of currency may increase or decrease in height. It is therefore possible that the paying teller might withdraw the bill 9 without noticing that it happens to be the one which supports the weight 6. If this should happen, the weight 6 would drop and enter the thimble 5. It would here exert a pressure on the arms 10 and 11 and therefore close the circuit through the switch 18, battery 13, and magnet 15. The magnet when energized would attract the armature 21 and this would in turn release the trip lever 28 and at the same time close a circuit through the contacts 23 and the buzzer or bell 24. This would, therefore, sound and the paying teller would immediately know that he withdrew the weight-retaining bill by mistake. Hence to prevent actuation of the main alarm bell E, he would merely open the switch 18. This would break the circuit to the alarm bell E and no final alarm would be given even though the push button should become depressed. However, with the bill 9 properly inserted, it can readily be seen that if someone not familiar with the alarm would attempt to rob the bank and pull all of the currency out of the till, weight 6 would then drop and close a circuit through the arms 10 and 11; the magnet 15 would be energized; the armature attracted; buzzer 24 would sound; the trip arm 28 would be released and similarly the dash-pot mechanism.

The piston rod 34 when released would, therefore, travel forwardly until it engaged the push button D, and it would then close the circuit through the main alarm bell E, as this is connected by wires 60 and 61 with the push button D, the switch 18 and a battery 62. An alarm would thus be given and the proper authorities would be notified that the bank was being robbed. On the other hand, if the circuits were closed by falling of the weight 6 and it was merely a mistake on the part of an authorized individual, it is obvious that switch 18 could be opened, as six to ten seconds would lapse before the circuit through the switch D was closed.

It should be understood that the only parts of the mechanism illustrated, which are mounted within the paying teller's cage, are the currency till, the weight receptacle B, the switch arms 10 and 11, and switch 18. The magnet 15 and the dash-pot mechanism may be located in an entirely different part of the bank or institution employing the same,

and the alarm bell E may be located at a police station or at any other suitable point. The buzzer 24 should, of course, be placed at a point where it can be heard by the paying teller or other authorized person, so if a mistake has been made it can be immediately rectified before the final alarm is turned in. The switch 18, by the way, is located somewhere within the cage but at a hidden point only familiar to the teller or other authorized person. In fact, it might be located exteriorly of the cage but it should at least be placed at a point where it can be reached within the time limit given.

The stop member 44 is provided with a lever extension 44<sup>a</sup>. This merely serves the function of returning the piston of the dash-pot mechanism to normal position. The upper end of the trip lever 28 is provided with a pin 28<sup>a</sup>. This enters a notch or recess in the armature arm and as such is locked thereby when the armature 21 assumes a depressed position.

While certain features of the present invention are more or less specifically illustrated, I wish it understood that various changes in form and proportion may be resorted to within the scope of the appended claims. I similarly wish it understood that the materials and finish of the several parts employed may be such as the experience and judgment of the manufacturer may dictate or various uses may demand.

Having thus described my invention, what I claim and desire to secure by Letters Patent is—

1. The combination with an electric circuit making mechanism, of a magnet adapted to be energized thereby, a movable armature actuated by the magnet, means actuated by the armature for closing an alarm circuit, and other means controlled by the armature for closing a second alarm circuit after a predetermined interval, said other means including a dash-pot comprising a cylinder, a piston and means for automatically actuating the piston, and a pivoted trip lever for holding

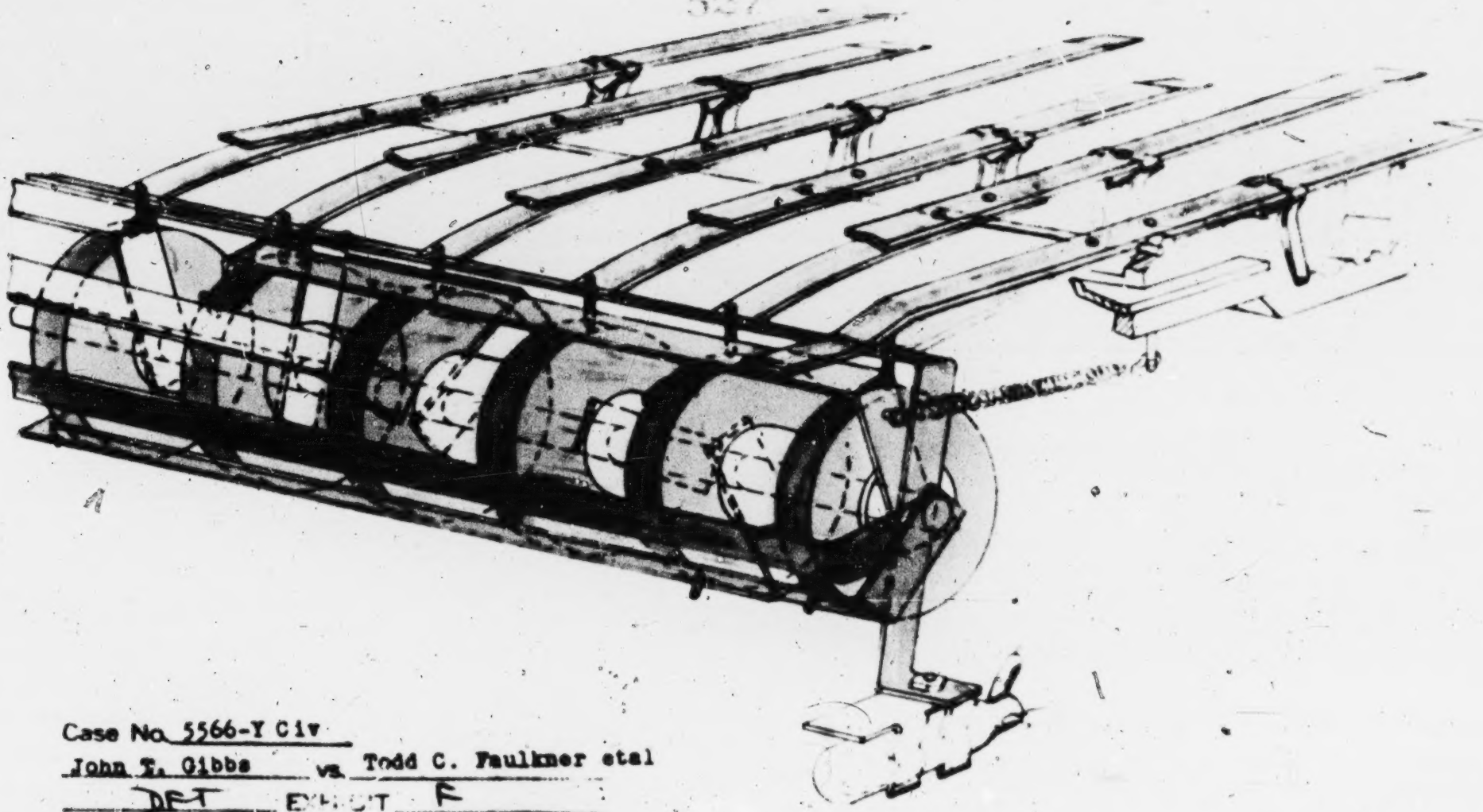
the piston against movement, said trip lever being engageable with and adapted to be held by the movable armature and to be released when the armature is actuated by the magnet.

2. The combination with an electric circuit making mechanism, of a magnet adapted to be actuated thereby, a pivotally mounted armature actuated by the magnet, means actuated by the armature for closing an alarm circuit, and other means actuated by the armature for closing a second alarm circuit after a predetermined interval, said other means including a dash-pot comprising a cylinder, a piston and means for automatically actuating the piston, and a pivoted trip lever for holding the piston against movement, said trip lever being engageable with and held by the armature and released from such engagement when the armature is actuated by the magnet.

3. The combination with an electric circuit making mechanism, of a magnet adapted to be actuated thereby, a pivotally mounted armature actuated by the magnet, means actuated by the armature for closing an alarm circuit, and other means actuated by the armature for closing a second alarm circuit after a predetermined interval, said other means including a dash-pot comprising a cylinder, a piston operating in the cylinder, a spring for actuating the piston, and means for controlling the speed of the piston, a stop carried by the piston and having a manually operable member for returning the piston to initial position after the piston has been actuated by the spring, and a pivoted trip lever movable into and out of engagement with the stop and adapted to hold the piston in a retracted position, said trip lever being engageable with and held by the pivotally mounted armature, the latter being weighted and normally maintained by gravity in engagement with the trip lever and the latter being released from such engagement when the armature is actuated by the magnet.

CHARLES J. LYNCH.





Case No. 5566-Y Civ

John T. Gibbs vs Todd C. Faulkner et al

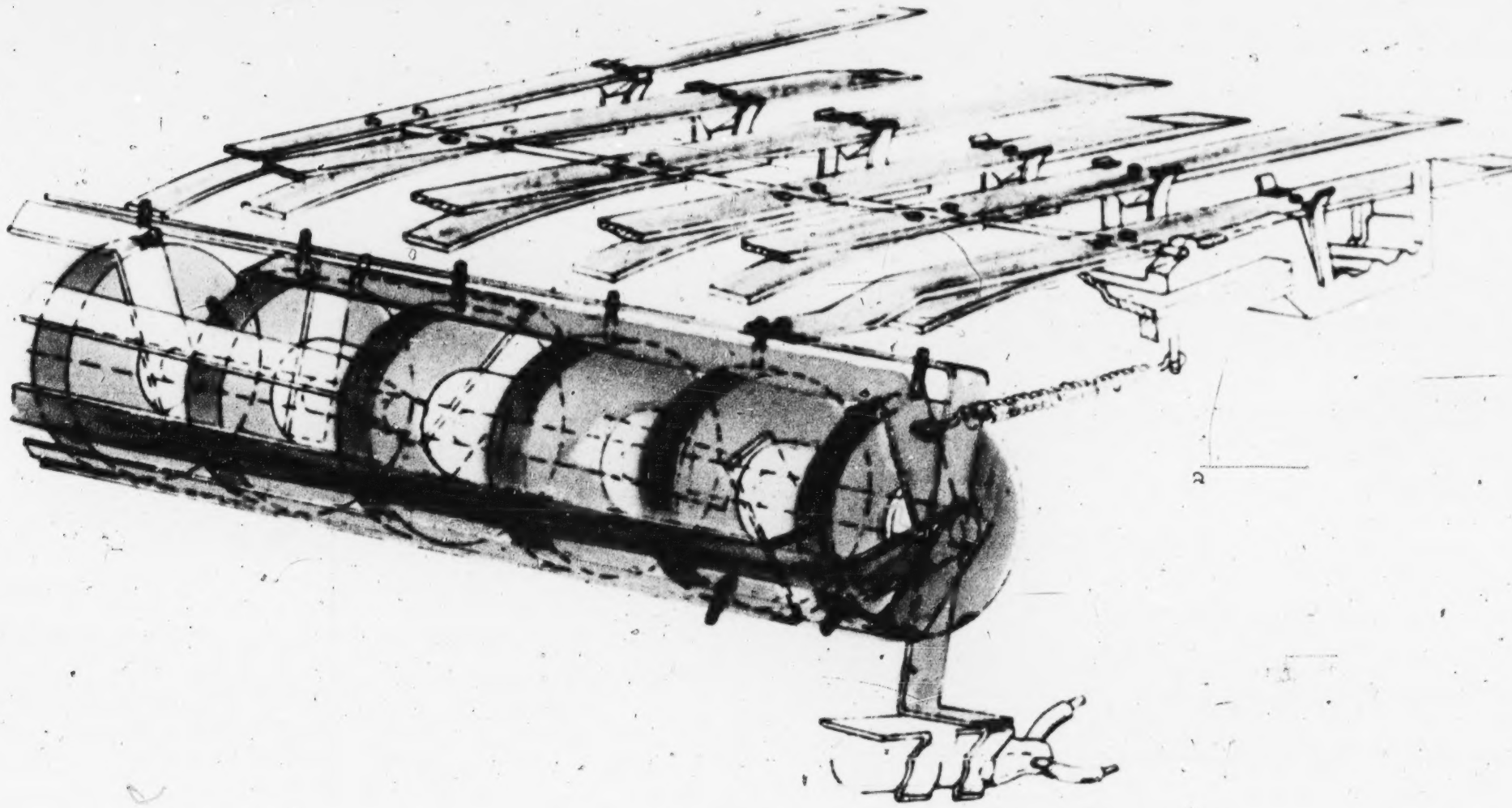
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Date \_\_\_\_\_ IN IDENTIFICATION

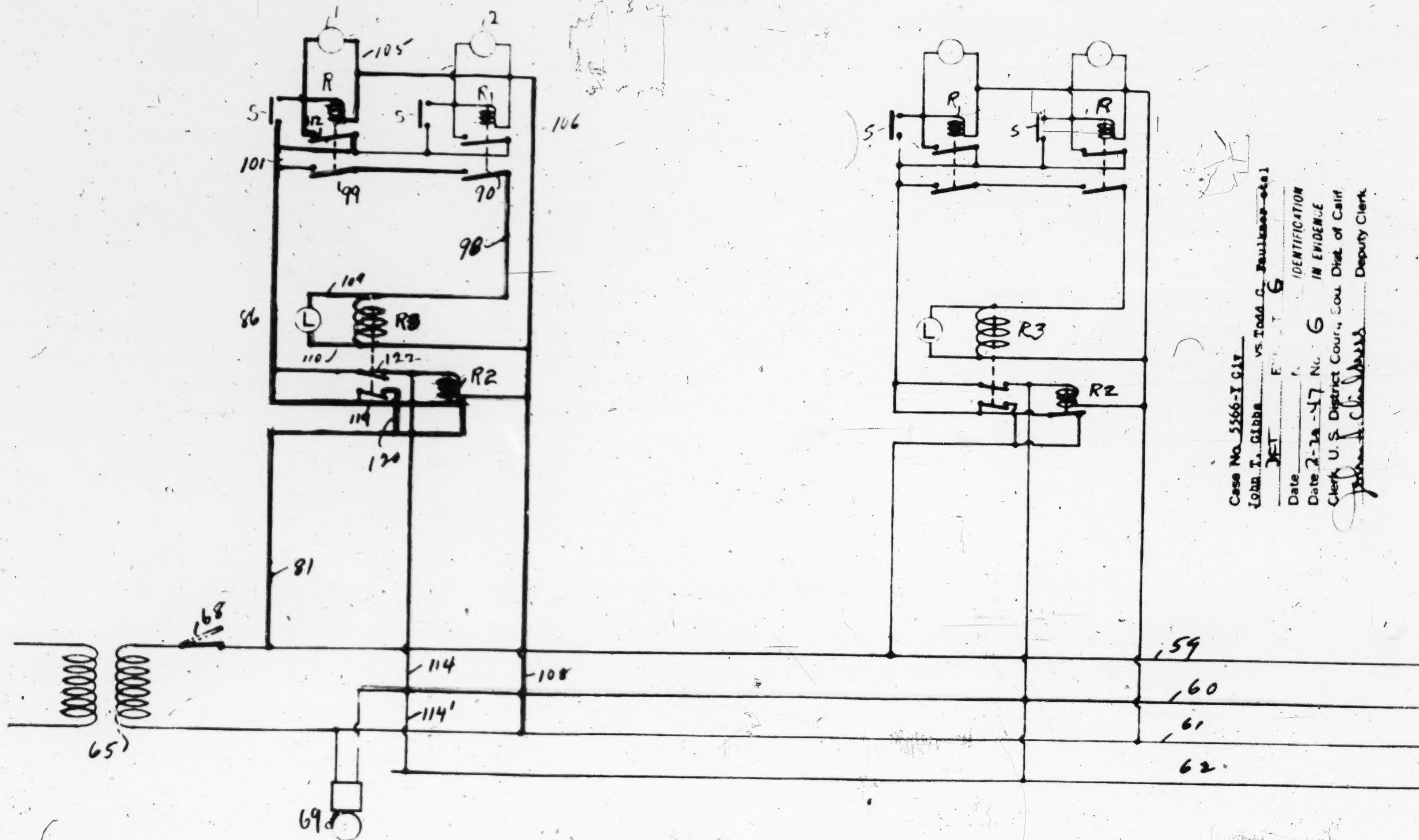
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*John A. Childress* Deputy Clerk

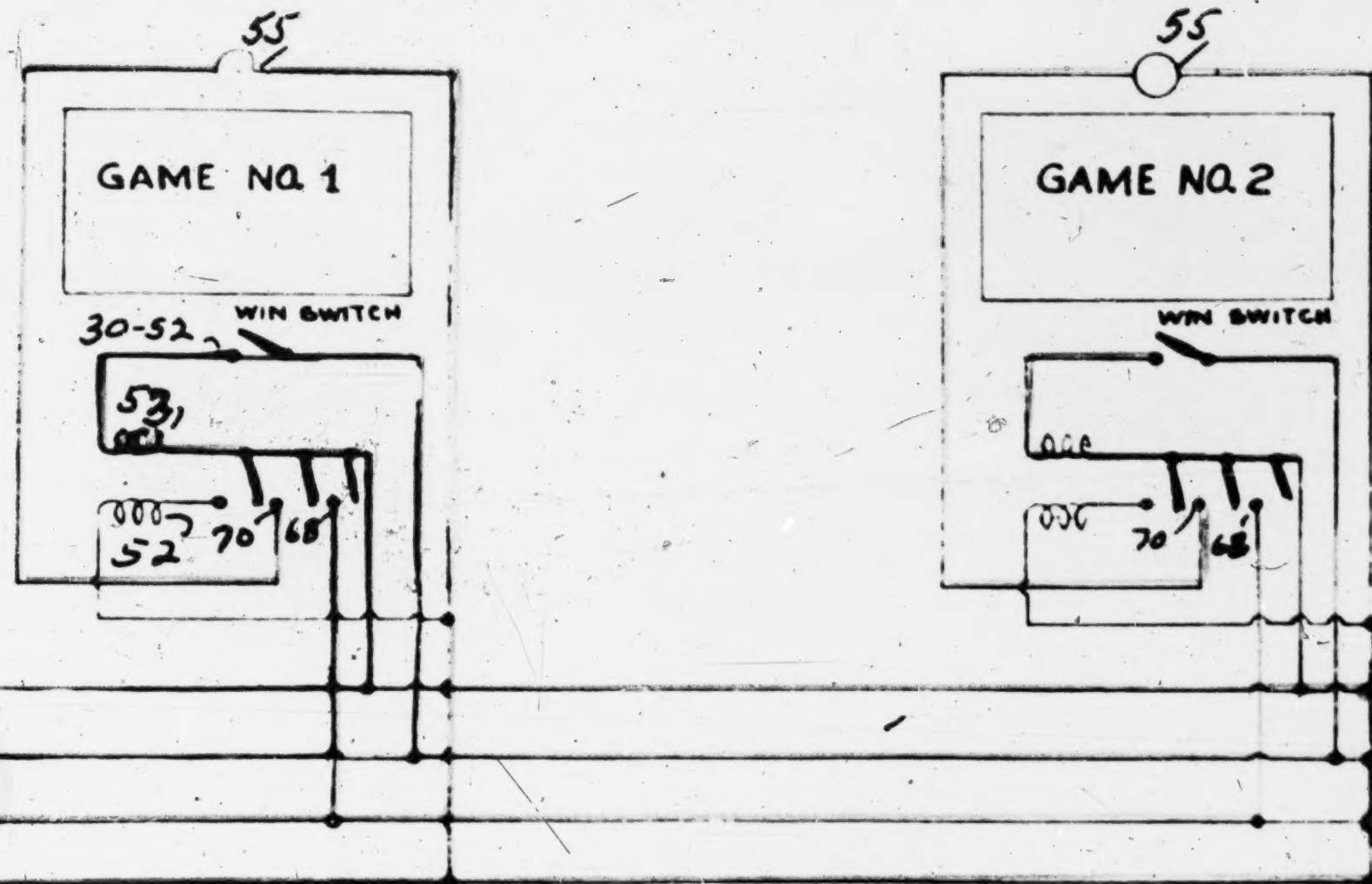


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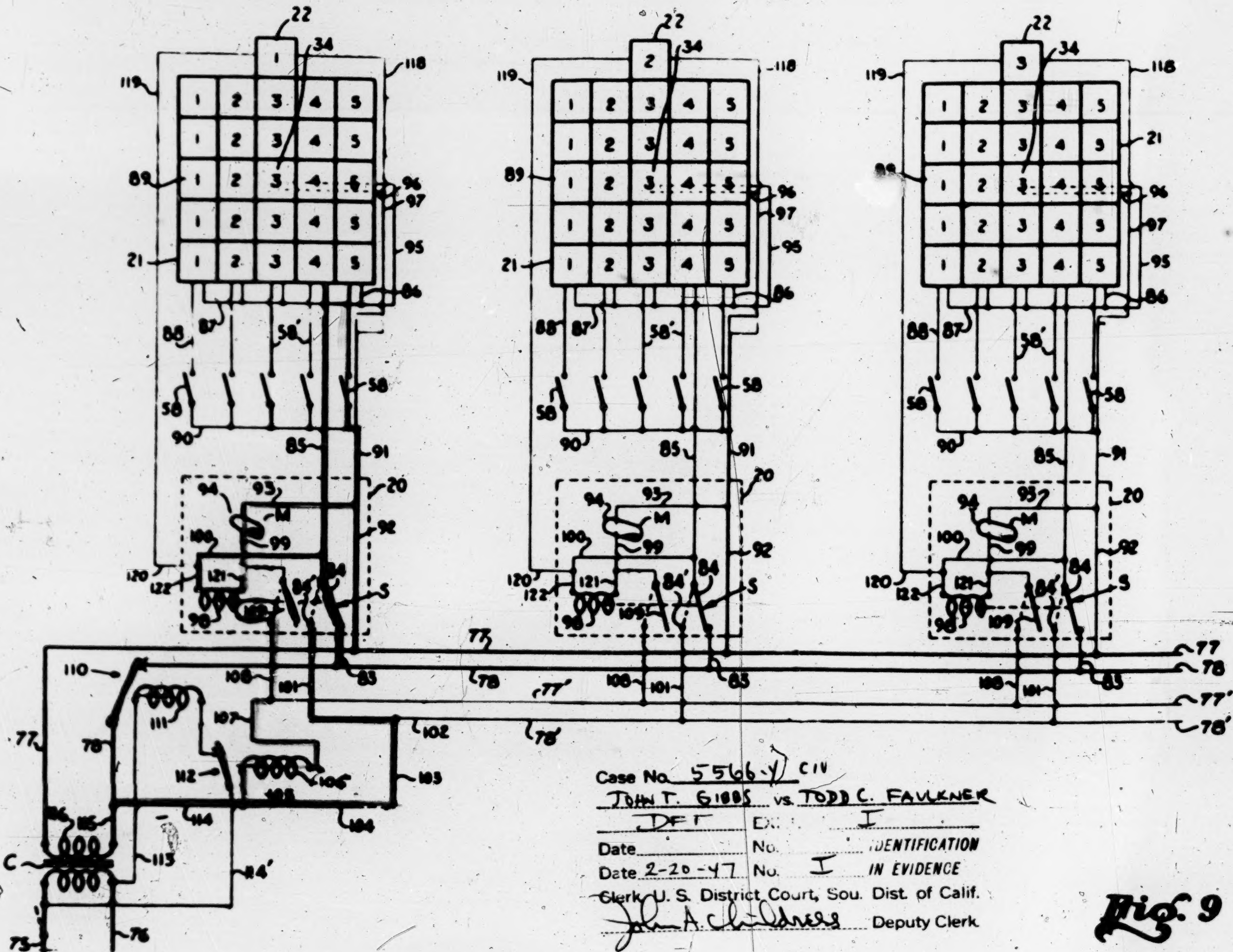
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 John T. Gibbs vs. Todd C. Faulkner et al  
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 Date 2-28-47 No. 6 IN EVIDENCE  
 Clerk U. S. District Court, San Dist. of Calif  
 John A. Clark Deputy Clerk

CHESTER 1,598,711



Case No. 5566-y CIV  
JOHN T. GIBBS vs. TODD C. FAULKNER  
DFT H  
 Date: \_\_\_\_\_ IDENTIFICATION  
 Date 2-20-47 No. H IN EVIDENCE  
 Clerk U. S. District Court, Sou. Dist. of Calif.  
John A. Childress Deputy Clerk







Case No. 5566-Y CIV

JOHN T. GIBBS vs TODD C. FAULKNER

DEF

Date

Date 2-20-47

No

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IDENTIFICATION

IN EVIDENCE

Clerk U. S. District Court, Sou. Dist. of Calif.

John A. Childress Deputy Clerk

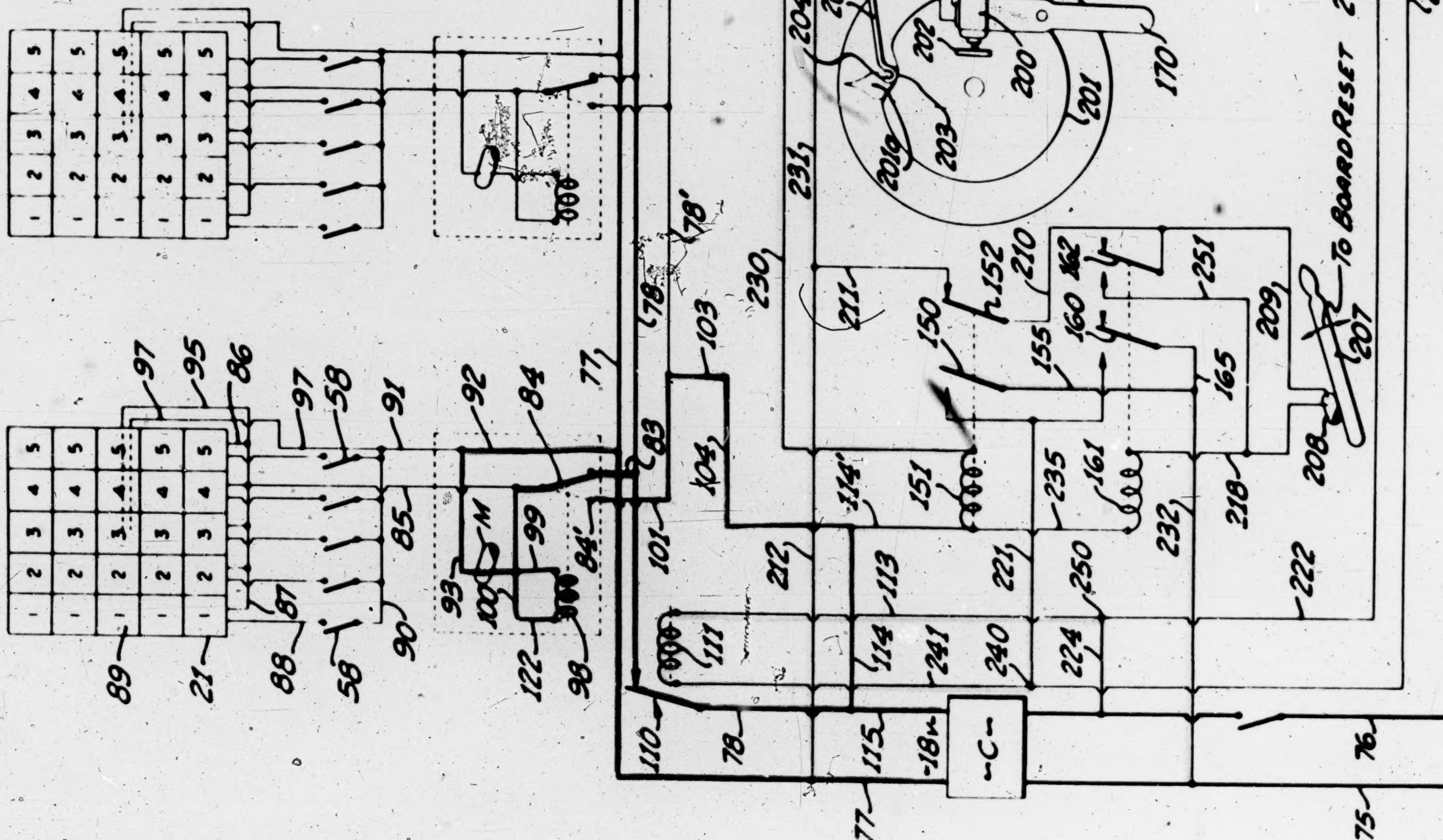


EXHIBIT "A"



**Vol. III**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1949**

**No. 19**

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**TODD C. FAULKNER, PETITIONER,**

**vs.**

**JOHN T. GIBBS**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JANUARY 31, 1949.**

**CERTIORARI GRANTED MARCH 23, 1949.**

**TRANSCRIPT OF RECORD**

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**IN THE**

**Supreme Court of the United States**

**OCTOBER TERM, 1948**

**No. ....**

**TODD C. FAULKNER,**

**Petitioner,**

**VS.**

**JOHN T. GIBBS,**

**Respondent.**

**(In Three Volumes)**

**VOLUME III.**

**(Pages 537 to 549, Inclusive)**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

No. 11667

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IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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TODD C. FAULKNER,

Appellant,

vs.

JOHN T. GIBBS,

Appellee.

---

Appeal from the United States District Court  
for the Southern District of California  
Central Division

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PROCEEDINGS HAD IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT



**United States Circuit Court of Appeals  
For the Ninth Circuit**

Excerpt from Proceedings of Wednesday, July  
21, 1948.

Before: Garrecht and Bone, Circuit Judges.

**ORDER OF SUBMISSION**

Ordered appeal herein argued by Mr. Roebert W. Fulwider, counsel for appellant, and by Mr. Herbert A. Huebner, counsel for appellee, and on oral stipulation of said counsel, submitted to Garrecht, Stephens and Bone, Circuit Judges, for consideration and decision.

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**In the United States Court of Appeals  
For the Ninth Circuit**

Excerpt from Proceedings of Friday, October  
8, 1948.

Before: Garrecht, Stephens and Bone,  
Circuit Judges.

**ORDER DIRECTING FILING OPINION AND  
FILING AND RECORDING OF DECREE**

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Court of Appeals  
For the Ninth Circuit

[Title of Cause.]

Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division

Before: Garrecht, Stephens and Bone,  
Circuit Judges.

Bone, Circuit Judge.

OPINION

Appellee sued appellant in the district court claiming infringement of all of the claims of the former's Letters Patent No. 1,906,260, issued May 2, 1933, (herein called Gibbs patent) covering a game device. Answering interrogatories, appellee claimed infringement of claims 3, 6, 7, 8, 9 and 10 in both the original and an altered game device manufactured and used by appellant. In its findings, later summarized, the trial court found valid all of the claims of the Gibbs patent which became material issues in this case.

Appellee's device is concededly a combination of old elements but he claims that it is a new and novel entity producing a new result never produced before. He sought the relief usually demanded in infringement cases.

Appellant's pleadings denied the charge of infringement and alleged generally the invalidity of appellee's patent on several grounds, namely, lack

of novelty and invention, the state of the prior art in the field covered by the subject matter of the Gibbs patent, and the existence of several prior patents identified by dates of issue and numbers. These were claimed to anticipate the patent in suit.

Appellant also claims that: the Gibbs patent is a mere aggregation or combination of old elements not producing any new or unexpected result; is merely the product of mechanical skill; is invalid for failure to comply with the provisions of 35 U.S.C.A. 33 in that Gibbs does not describe the patent in full, clear concise and exact terms which would enable any person skilled in the art to practice the art; the claims do not particularly describe and distinctly claim as invention the part, improvement or combination claimed as invention but merely represent an attempt to patent a function or result, and finally, that the patent is a joint invention of Gibbs and another. The foregoing claims were before the court on the trial, including copies of the Gibbs patent and all patents claimed to anticipate it.

In essence appellee's patented game device is an assembly or combination comprising a plurality of electrically interconnected game units each of which units has the general outward appearance of the well known pin-ball machine. Each unit is operated by a separate player who competes with players operating the other units in the multiple assembly. See *Gibbs v. T. Z. R. Amusement Corporation*, reported in 14 Fed. Supp. 957, a case involving the Gibbs patent. (All of the claims of the patent



are there set forth and in the interest of brevity they are not repeated here.)

After initiation of this litigation, appellant altered the electrical circuit or circuits in, and method of play on, his accused game device and he contends that these modifications or alterations so changed his accused device that infringement of appellee's device (which he denies) was, in any event, thereby eliminated.

Appellee contends that these alterations in appellant's (so-called) "Fawn game" were, in effect, a mere "re-arrangement," and did not so alter that device that it no longer infringed the Gibbs patent. His position is that the physical elements of playing board, annunciator light panel, playing balls, and arrangement remaining identical; that appellant's modified device retained the same electrical circuits with certain immaterial exceptions consisting of certain light bulbs unscrewed from their sockets, one wire connection shifted, and an electric "time switch" added as an accessory. The method of play was the same as before, i.e., the rolling of the ball until five lights in a row appeared. All an added time switch did was to limit the period in which the Fawn game could be played—it was an *addition to*, not an *omission from*, the primary claimed features of the Gibbs patent.

Conflicting evidence was introduced at trial to demonstrate to the court the nature and effect of the alterations. Schematic drawings and diagrams were employed for the purpose of illustrating and explaining, by aid of oral testimony, the nature and operation of the maze of complicated electrical



circuits employed in the various game devices of both parties. The oral testimony clearly appears to have been necessary to a correct understanding of the involved and complicated problem of electrical circuits then before the court and it was the province of the trial court to determine from conflicting evidence whether or not there had been a material change in the mechanical or electrical construction of the original Fawn game by the alterations appellant made therein. See *Antonsen v. Hedrick*, 9-Cir., 89 F. 2d 149, 151. The practical nature and significance of these alterations presented a substantial dispute involving a question of fact and it is evident that this question could not be determined by the court by a mere comparison of structures. Hence the resort to explanatory and construing testimony of "experts" on the matter of application of descriptions to subject-matter. (See cases footnote 5.)

Much stress was laid on a certain (Nakashima) patent, No. 1,678,573, by the expert witness for appellant, the claim being made by him that it was one of the closest prior patents. The witness indicated that there was no single patent in the prior art which was a complete anticipation of the Gibbs combination patent, but expressed the opinion that Nakashima was an anticipation of claim 3 of the Gibbs patent. The trial court did not agree with the conclusions expressed by this witness concerning Nakashima and the other claimed anticipatory patents, and nothing in the record compels the conclusion that the court erred in reaching its decision on this issue.

Appellant presents three principal issues on this appeal: (1) Is the Gibbs patent valid, (2) Does the new "Fawn game" infringe, and (3) Did the "old (original) Fawn game" infringe. ("Fawn game" is the name applied by appellant to his original accused game device. After the alterations above mentioned it was referred to as the "altered Fawn game.")

We think that these contentions, together with others set forth in his pleadings and argued in his brief on appeal, clearly present issues of fact and were properly disposed of as such by the trial court. The findings were based upon both explanatory oral testimony and relevant documents; they have the support of substantial evidence believed by the trial court to be accurate and reliable and we find no sound reason for disturbing them.

The pertinent findings may be summarized as follows: That appellee has built and installed his patented game at various places in this country and at one place in England; that he has granted numerous patent licenses thereon; that the patent has been held valid and infringed as to all its claims in the case of *Gibbs v. T. Z. R. Amusement Corporation*, *supra*, and has been held valid and infringed, upon stipulation of the parties, by consent judgments in six cases in United States District Courts in the States of California, Connecticut and New York; that appellant is the only one refusing to recognize the validity of appellee's patent; that the Gibbs patent is neither ambiguous nor indefinite in either its specifications and claims.

but is fully understandable by any one skilled in the art and complies with Revised Statutes Section 4888; that appellee is the sole inventor; that 14 Letters Patent covering other game devices offered in evidence together with a certain catalog dated 1929, do not disclose, or anticipate, or suggest either singly or collectively, the subject matter of the Gibbs patent, nor do these documents furnish any basis for any finding or conclusion that the Gibbs patent lacks invention; that appellee has complied with the provisions of 35 U.S.C.A. 49; that appellant's Fawn game is in two forms, one being the original, which was modified after the commencement of this litigation, but the modified Fawn game embodies the same physical structure, function and appearance as the original Fawn game with certain changes which are of such a character that it would require only a few minutes work to restore it to its exact original form; that the electrical wiring for the original circuits remains intact in the altered game with only a difference in the terminal connection of one wire.

Further summarized findings are that: The original Fawn game embodies the subject matter of the Gibbs patent as defined in its claims 3, and 6 to 10, both inclusive, and the altered Fawn game embodies the subject matter of the Gibbs patent as defined in claims 3, 9 and 10; that appellant derived the Fawn game from an examination of a similar game which in turn had been copied from a game embodying the subject matter of the Gibbs patent; that as to claims 3, and 6 to 10, both in-

clusive, the Gibbs patent is not anticipated, displays invention, is valid and was infringed by appellant's original Fawn game, and the said patent was also infringed as to its claims 3, 9 and 10 by appellant in causing alterations to be made in his Fawn game.

From the findings, as above summarized, the court concluded that the Gibbs patent was good and valid in law as to claims 3, and 6 to 10, both inclusive; that appellant infringed the claims of this patent, as noted above, thereby causing appellee irreparable loss, injury and damage, as a result of which appellee should have an injunction against further infringement and also for an accounting and recovery of damages and costs of the action including reporter's and attorneys' fees to be fixed by the court.

We are of the view that the trial court committed no error in its factual findings and that its determination and application of the law was and is correct.

The question of whether or not a new and useful combination is the result of mere mechanical skill, or of inventive faculty, is one of fact.<sup>1</sup>

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<sup>1</sup> Thomson Spot Welder Co. v. Ford Motor Co., 265 U. S. 445, 446; Keyes & Another v. Grant & Another, 118 U. S. 25, 36, 37; Ralph N. Brodie v. Hydraulic Press Mfg. Co., 9-Cir. 151 F. 2d 91; Crowell v. Baker Oil Tools, Inc., 9-Cir. 153 F. 2d 972; Maulsby v. Conzevoy, 9-Cir., 161 F. 2d 165; Wire Tie Mach. Co. v. Pacific Box Corp., 9-Cir., 102 F. 2d 543; Reinharts, Inc. v. Caterpillar Tractor Co., 9-Cir., 85 F. 2d 628, 630; Hanovia Chemical Co. v. David Butterick Co., 1-Cir., 127 F. 2d 888, 889.



What constitutes invention as distinguished from a mere aggregation, is a question of fact.<sup>2</sup>

Questions of invention and patent validity are questions of fact.<sup>3</sup>

Whether prior art patents or publications disclose or anticipate the subject matter of a patent in issue is determined as a question of fact.<sup>4</sup>

The issue of infringement presents a question of fact.<sup>5</sup>

The Gibbs patent was regularly issued and its claims are presumptively valid.<sup>6</sup>

The court entered an interlocutory judgment

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Page v. Myers, 9-Cir., 155 F. 2d 57.

See *Wire Tie Mach. Co. v. Pacific Box Corp.*, supra. See also *Continental Paper Bag Co. v. East-ern Paper Bag Co.*, 210 U. S. 405, 416; *Keyes & Another v. Grant & Another*, supra, p. 37; *Research Products Co. v. Tretolite Co.*, 9-Cir., 106 F. 2d 530; *Ralph N. Brodie v. Hydraulic Press Mfg. Co.*, supra; *Stuart Oxygen Co. v. Josephian*, 9-Cir., 162 F. 2d 857; *Reinhart's Inc. v. Caterpillar Tractor Co.*, supra, p. 630; *Hanovia Chemical & Mfg. Co. v. David Butterick Co.*, supra; *Dow Chemical Co. v. Halliburton Oil Well Cementing Co.*, 6-Cir., 139 F. 2d 473; *General Motors Corp. v. Kesling*, 8-Cir., 164 F. 2d 824.

<sup>2</sup> *Keyes & Another v. Grant & Another*, supra; *Thomson Spot Welder Co. v. Ford Motor Co.*, supra, p. 452; *Crowell v. Baker Oil Tools, Inc.*, supra; *Hanovia Chemical & Mfg. Co. v. David Butterick Co.*, supra.

<sup>3</sup> *Reinharts, Inc. v. Caterpillar Tractor Co.*, supra, p. 630; *Stuart Oxygen Co., Ltd., v. Josephian*, supra; *Ralph N. Brodie v. Hydraulic Press Mfg. Co.*, supra, p. 95; *Bates v. Coe*, 98 U. S. 31, 49; *General Motors Corp. v. Kesling*, supra, p. 836.

<sup>6</sup> See *Ralph N. Brodie v. Hydraulic Press Mfg. Co.*, supra.

holding the Gibbs patent valid in law as to claims 3, 6, 7, 8, 9 and 10; adjudging that appellant infringed claims 3, 6, 7, 8, 9 and 10 of that patent by making and using the original Fawn game, and infringed claims 3, 9, and 10 of the said patent by making and using the altered Fawn game. The cause was referred to a master for a report of an account respecting general damages; appellant was enjoined from the making, using or selling any game apparatus embodying the invention claimed in said claims 3, 6, 7, 8, 9 and 10 and from in any way infringing upon any of said claims or upon the rights of appellee under said claims. Costs and attorneys' fees of \$500 were assessed.

The judgment finds ample support in the record and is affirmed.

Judge Garrecht participated in the hearing on this appeal but died before an opinion could be prepared. Counsel for both appellant and appellee agreed that Judges Stephens and Bone should decide the case on this appeal.

[Endorsed]: Opinion. Filed Oct. 8, 1948. Paul P. O'Brien, Clerk.

In the United States Court of Appeals  
For the Ninth Circuit

No. 11667

TODD C. FAULKNER,

Appellant,

vs.

JOHN T. GIBBS,

Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered Oct. 8, 1948. Paul P. O'Brien, Clerk.

In the United States Court of Appeals  
For the Ninth Circuit

Excerpt from Proceedings of Tuesday, November 23, 1948.

Before: Stephens and Bone, Circuit Judges.

**ORDER DENYING PETITION  
FOR REHEARING**

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed November 8, 1948, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.



In the United States Court of Appeals  
for the Ninth Circuit

[Title of Cause.]

**CERTIFICATE OF CLERK, U. S. COURT OF  
APPEALS FOR THE NINTH CIRCUIT, TO  
RECORD CERTIFIED UNDER RULE 38 OF  
THE REVISED RULES OF THE SUPREME  
COURT OF THE UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three volumes containing five hundred and forty-eight (548) pages, numbered from and including 1 to and including 548, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of December, 1948.

[Seal]

PAUL P. O'BRIEN,  
Clerk.

## SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 28, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3228)

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CLERK

# Supreme Court of the United States

October Term, ~~1948~~ 1949  
No. ~~527~~ 19

TODD C. FAULKNER,

*Petitioner,*

*vs.*

JOHN T. GIBBS,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF AP-  
PEALS FOR THE NINTH CIRCUIT AND  
BRIEF IN SUPPORT THEREOF.

HAROLD W. MATTINGLY,

5225 Wilshire Boulevard, Los Angeles 36, California.

*Attorney for Petitioner.*

ROBERT W. FULWIDER,

*Of Counsel.*

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Point 1. The Court of Appeals for the Ninth Circuit in holding sufficient under R. S. 4888 the functional statements, "means for energizing" in Claim 3, "means whereby, etc." in Claims 6, 7 and 8, "means for discontinuing etc." in Claims 9 and 10 of Patent No. 1,906,260, which statements define the only novelty in said claims, has rendered a decision in direct conflict with the decisions of this court in <i>Halliburton Oil Well Cementing Co. v. Walker, et al.</i> , 329 U. S. 1, 67 S. Ct. 6; and <i>General Electric Co. v. Wabash Appliance Corp.</i> , 304 U. S. 364, 58 S. Ct. 829	13



Point II. Since Claims 6, ~~7~~ and 8 of Patent 1,906,260 were held not infringed by petitioner's new Fawn game because said new game omitted an essential element of said claims, the decision of the courts below that Claims 9 and 10, which include the same essential element, were infringed by said new Fawn game, is so inconsistent on its face as to constitute such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this court's power of supervision. 17

Point III. That issues of great moment to the public are involved and further litigation of Patent 1,906,260 which might result in conflict between Circuit Courts of Appeals is improbable because respondent has dominated the field so thoroughly as to intimidate other operators. 19

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IN THE  
**Supreme Court of the United States**

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October Term, 1948

No. ....

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TODD C. FAULKNER,

*Petitioner,*

vs.

JOHN T. GIBBS,

*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF AP-  
PEALS FOR THE NINTH CIRCUIT.**

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*To the Honorable the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your Petitioner, Todd C. Faulkner, respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Ninth Circuit to review the Decree of that Court holding valid and infringed United States Letters Patent No. 1,906,260. Said Decree was entered October 8, 1948 [R. 547] and petition for a rehearing was denied November 23, 1948 [R. 548].

This Court has jurisdiction under Title 28, United States Code, Section 1254.

A certified transcript of the record in the case including the proceedings in the Court of Appeals is furnished herewith in compliance with Rule 38 of the Rules of this Court.

## Summary Statement of the Matter Involved.

This case was brought by Respondent against Petitioner for infringement of United States Patent No. 1,906,260 issued on May 21, ~~1933~~, to the Respondent for a competitive game. Prior to this suit the Petitioner had for some time been operating a competitive game in Long Beach, California, known as the "Fawn Game," said game being variously referred to in the record as the "old" or "original" Fawn game.

Subsequent to the bringing of said suit Petitioner modified his game by incorporating a time clock therewith so that the players no longer competed with each other as in Respondent's game, but played for a stipulated time controlled by the clock. Said modified game is referred to in the record as the "new" or "altered" Fawn game. Petitioner then filed a Counterclaim [R. 12, 13] praying for a declaratory judgment of non-infringement as to *both* Fawn games, and invalidity of the Gibbs patent.

At the trial, claims 3, 6, 7, 8, 9 and 10 were in issue, and the trial judge decreed [R. 42] that all of said claims had been infringed by the original Fawn game. However, the *new* Fawn game was decreed to infringe only claims 3, 9 and 10, *i. e.*, it did *not* infringe claims 6, 7 and 8. An appeal was taken and the supersedeas bond was ~~set at~~ \$15,000. The Decree of the trial court was affirmed by the Ninth Circuit Court of Appeals and this Petition seeks a review of said affirmance.

As to validity, the functional language of the claims raises a question of law.

The patent in suit [R. 295] is concerned with a competitive game comprising a plurality of electrically interconnected units, each of which has the general outward ap-



pearance of the well-known pinball machine. Each unit is operated by a separate player who competes with players operating the other units [R. 539], the method of play being that of the well-known game called Bingo or Tango which was an outgrowth of the ancient game of Lotto.

Each game unit has a playing board with rows of holes therein and an annunciator backboard with an indicator light thereon for each of said holes. When a ball is rolled into any one of the holes on the playing board, a switch beneath the hole is closed and the corresponding indicator light on the annunciator panel is energized and remains energized during the balance of the play. Game units of this type were old in the prior art as shown in the patents to Nakashima [R. 375] and Hayashi [R. 383].

When a win is accomplished on any unit of the game a supplementary signal light on top of the annunciator panel of the winning unit is operated and all of the other game units are immediately de-energized to prevent further play thereon. A supplementary signal for indicating a win was shown in the Nakashima patent.

The assembly of a plurality of individually operated game units for competitive play and their interconnection in such a manner that a win on one unit immediately de-energized, *i. e.*, disconnected, all of the other units had long been standard practice in games of this type as shown by the patents to Chester [R. 423], Wallace [R. 435], Higuchi [R. 400] and others, and as admitted by Respondent on the witness stand [R. 147, 149-151].

Claim 3 of the patent in suit is a sub-combination claim directed to the construction and operation of one of the individual units of Respondent's game, while claims 6 to 10, inclusive, are directed to the entire game comprising

a plurality of said units interconnected so that a win on one unit will disconnect the rest.

The only possible novelty of claim 3 over said Nakashima patent [R. 375] resides in Respondent's particular method of energizing the indicator lights. This feature is described in the claim as

*"means for energizing the said indicators as the associated contact devices (switches) are operated."*

The only novelty in claims 6 to 10 over the Nakashima patent is expressed functionally as "means" for de-energizing or disconnecting the non-winning units when a win is made on one unit.

Petitioner in his Amended Answer, paragraph 6(b) [R. 11], specifically raised the issue of the failure of Respondent's claims to comply with R. S. 4888 on the ground that they

*"do not particularly point out and distinctly claim the part, improvement or combination which the applicant therefor claims as his invention or discovery."*

This defense was urged both at the trial and on the appeal, and while it was mentioned in the Appellate Court's decision, no discussion thereof was had in said Opinion. By its affirmance of the lower court's Decree the Court of Appeals held said claims to be sufficient under the statute.

As to infringement, the Decree of the Court of Appeals also raises a question of law.

Petitioner's original Fawn game, seen best in the photographs [R. 325-339], while different structurally was

similar to Respondent's game in result and method of play, and when a win was made on one unit, the other units were immediately disconnected. In the altered Fawn game, however, there is no de-energization or disconnection of the non-winners when a win is made. All units stay operable, no matter how many wins, until the time clock shuts them all down at once.

The trial court therefore decided [R. 287, 289] that the new Fawn game did not infringe claims 6, 7 and 8 since they called for a competitive game in which all non-winning units are immediately de-energized when one unit wins. No appeal was taken by Respondent from this decision.

However, claims 9 and 10, which also are limited in almost the same language as used in claim 6 to a competitive game in which the non-winning units are immediately disconnected, were held to be infringed by the new Fawn game.

The Findings of Fact do not give any basis for these inconsistent holdings of the trial court, and no amplification thereof appears in the Opinion of the Court of Appeals, which merely summarized without discussion the Findings of the lower court and the contentions of the parties.

Alternate Findings and Conclusions which would have removed these inconsistencies were proposed to the trial court [R. 20-33] but were refused.

## Questions Presented.

The Decree of the Court of Appeals for the Ninth Circuit raises the following questions of law:

QUESTION 1. Is the doctrine of *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6, 71 U. S. P. Q. 175, condemning the use of indefinite and functional language at the exact point of novelty in patent claims for a combination of mechanical and acoustical elements, applicable to claims for a combination of mechanical and electrical elements where the only feature of novelty in the claims is described broadly in terms of "means," or is said decision to be ignored as was done by the Court of Appeals in this case?

QUESTION 2. Where a court holds an accused apparatus not to infringe certain patent claims because said apparatus does not include an essential element of said claims, is it not contrary to fundamental law and logic for the court in the same decision to hold other claims of said patent which include the same essential element, infringed by said accused apparatus?

## Reasons Relied Upon for the Allowance of the Writ of Certiorari.

The discretionary power of this Court is invoked upon the following grounds:

1. That the Court of Appeals for the Ninth Circuit in holding sufficient under R. S. 4888 the functional statements, "means for energizing" in claim 3, "means whereby, etc.," in claims 6, 7 and 8, and "means for discontinuing, etc.," in claims 9 and 10 of Patent No. 1,906,260, which statements define the only novelty in said claims, has rendered a decision in direct conflict with the decisions



of this Court in *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6, and *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364, 58 S. C. 899.

2. That since claims 6, 7 and 8 of Patent 1,906,260 were held not infringed by Petitioner's new Fawn game because said new game omitted an essential element of said claims, the decision of the courts below that claims 9 and 10, which include the same essential element, were infringed by said new Fawn game, is so inconsistent on its face as to constitute such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

3. That issues of great moment to the public are involved and further litigation of Patent 1,906,260 which might result in conflict between Circuit Courts of Appeals is improbable because Respondent has dominated the field so thoroughly as to intimidate other operators.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

HAROLD W. MATTINGLY,

*Attorney for Petitioner.*

ROBERT W. FULWIDER,

*Of Counsel.*

State of California, County of Los Angeles—ss.

Harold W. Mattingly, being duly sworn, deposes and says:

That he is the attorney for the Petitioner herein, that he prepared the foregoing Petition and that the allegations thereof are true, as he verily believes.

HAROLD W. MATTINGLY.

Subscribed and sworn to before me this 28th day of January, 1949.

(Seal)

MARJORIE MCKAY,

*Notary Public.*

My commission expires July 15, 1949.

## BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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### The Opinions of the Courts Below.

The Opinion of the Court of Appeals for the Ninth Circuit is reported at 170 F. 2d 34, 79 U. S. P. Q. 158, and appears in the record filed herewith [R. 538]. The Findings of Fact and Conclusions of Law of the District Court are in the record [R. 33-40]. The trial court's Opinion was delivered from the bench at the close of the trial and appears at pages 282-289 of the record. It was not reported. For a full understanding of the trial court's reasoning in the case it is necessary to also read pages R. 266-282 which cover the latter part of the general discussion between the Court and counsel preliminary to rendering the Opinion.

### Jurisdiction.

The grounds for jurisdiction are:

1. The Decree of the Court of Appeals was entered October 8, 1948 [R. 547]. Petition for rehearing was denied November 23, 1948 [R. 548].

2. The Decree was rendered in a suit in equity brought under the patent statutes to determine the issues of validity and infringement of Letters Patent issued by virtue of Revised Statute No. 4886 (35 U. S. C. 31).

3. The statute under which the jurisdiction of this Court is invoked is Title 28, United States Code, Section 1254.

4. The cases believed to sustain the jurisdiction are:

*United Carbon Co. v. Binney & Smith Co.*, 317  
U. S. 228, 87 L. Ed. 232;

*Schriber-Schroth Co. v. Cleveland Trust Co.*, 311  
U. S. 211, 217, 85 L. Ed. 132, 135;

*Mackay Radio & Telegraph Co. v. Radio Corp. of  
America*, 306 U. S. 86, 89, 83 L. Ed. 506, 508;

*Halliburton Oil Well Cementing Co. v. Walker,  
et al.*, 329 U. S. 1, 67 S. C. 6, 71 U. S. P. Q. 175.

### Statement.

The facts are stated in the Petition.

### Statutes.

The statutes under which this case arises which are necessary to be considered are as follows:

Revised Statute, Section 4886 (U. S. C., Title 35, sec. 31):

"Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have



been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

Revised Statute, Section 4888 (U. S. C., Title 35, sec. 33):

"Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery . . . ."

### Specification of Errors.

The errors which Petitioner will urge if the writ of certiorari is allowed, are that the Court of Appeals for the Ninth Circuit erred:

1. In failing to reverse the Decree of the District Court holding the Gibbs Patent No. 1,906,260 valid and infringed by Petitioner;

2. In holding the Gibbs Patent No. 1,906,260 to be valid;

3. In holding the Gibbs Patent No. 1,906,260 to have been infringed by Petitioner;

4. In failing to hold that the law established by the decisions of this Court in *Halliburton Oil Well Cementing Company v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6; 71 U. S. P. Q. 173, and *General Electric Company v. Wabash Appliance Company*, 304 U. S. 364, 58 S. C. 899, were controlling and dispositive of the litigation;

5. In holding that claims 3, 6, 7, 8, 9 and 10 of Gibbs Patent No. 1,906,260 define the alleged improvement thereof with sufficient distinctness and clarity to comply with Revised Statute 4888 which requires a patentee to "particularly point out and distinctly claim the part, improvement or combination which he claims as his invention or discovery."

### Summary of Argument.

The points of the argument re-state the reasons relied upon for the allowance of the writ of certiorari (pp. 6-7; *supra*).

## ARGUMENT.

### POINT I.

The Court of Appeals for the Ninth Circuit in Holding Sufficient Under R. S. 4888 the Functional Statements, "Means for Energizing" in Claim 3, "Means Whereby, etc." in Claims 6, 7 and 8, and "Means for Discontinuing etc." in Claims 9 and 10 of Patent No. 1,906,260, Which Statements Define the Only Novelty in Said Claims, Has Rendered a Decision in Direct Conflict With the Decisions of This Court in *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6; and *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364, 58 S. C. 899.

In the *General Electric v. Wabash* case, this Court speaking through Mr. Justice Reed said:

"The claim uses indeterminate adjectives which describe the function of the grains to the exclusion of any structural definition and thus falls within the condemnation of the doctrine that a patentee may not broaden his product claims by describing the product in terms of function. *Holland Furniture Co. v. Perkins Glue Co.*, 277 U. S. 245, 45 S. C. 474. \* \* \* but the vice of a functional claim exists not only when a claim is wholly functional, if that is ever true, but also when the inventor is painstaking when he recites what has already been seen, and then uses conveniently functional language at the exact point of novelty."

The foregoing doctrine was re-affirmed and amplified in the *Halliburton v. Walker* case. The Walker patent was concerned with locating the fluid level in a well and included means for creating a pressure wave in the well

and a system for recording on a chart the time when the wave was initiated and the time when echoes returned from obstructions in the well. The novelty of the Walker patent resided in the addition of an adjustable pipe which functioned as an acoustical tuned-resonator so that better records could be made of echoes from tubing collars. This latter element which constituted the sole novelty in the Walker patent was described in the claims as

"means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

In discussing the Walker claims, this Court speaking through Mr. Justice Black pointed out that:

"The language of the claim thus describes this most crucial element in the new combination in terms of what it will do rather than in terms of its own physical characteristics or its arrangement in the new combination apparatus."

The Court then went on to say:

"Patents on machines which join old and well known devices with the declared object of achieving new results, or patents which add an old element to improve a pre-existing combination, easily lend themselves to abuse. And to prevent extension of a patent's scope beyond what was actually invented, courts have viewed claimed combinations and improvements or additions to them with very close scrutiny.

"These principles were again emphasized in *Merrill v. Yeomans*, 94 U. S. 568, 570, where it was said



that in cases where the invention is a new combination of old devices he (the patentee) is bound to describe with particularity all these old devices and then the new mode of combining them for which he desires a patent. This view has most recently been reiterated in *General Electric Co. v. Wabash Electric Co.*, *supra*. Cogent reasons would have to be presented to persuade us to depart from this established doctrine. The facts of the case before us far from undermining our confidence in these earlier pronouncements, reinforce the conclusion that the statutory requirement for a clear description of claims applies to a combination of old devices."

It would be difficult to find claims more clearly on all fours with the claims in the *Halliburton* case than the claims of Respondent herein. In the Walker claims the only element of novelty was described as means for tuning the receiving means to the frequency of echoes from the tubing collars. In claim 3, for example, of Respondent's patent the only element of novelty is described as "means for energizing the indicators as the associated contact devices are operated." Since the language in the Walker claims does not comply with the statute, the quoted wording from Respondent's claim 3 likewise does not comply with the statute.

The only "means for energizing" disclosed in Respondent's patent is a series of electrical relays, one for each indicator lamp.

In the Fawn games, both old and new, the same result is accomplished mechanically.

Claims 6 to 10 are equally objectionable under the statute, since in each instance they like claim 3, use con-

veniently functional language at the exact point of novelty. By their broad functional wording they purport to cover all combinations of elements, known and unknown, which achieve the desired result.

As previously mentioned, the doctrine of *Halliburton v. Walker* was urged upon both the trial and Appellate Courts herein. While the trial court paid lip service to the case by stating [R. 287] that if claim 6 were interpreted as broadly as requested by Respondent at the trial it would be invalid under the Halliburton doctrine, the Court of Appeals completely ignored the case and the doctrine.

In the first part of its decision the Circuit Court [R. 539] referred to Petitioner's contention that the claims in suit were invalid

"for failure to comply with the provisions of 35 U. S. C. 33 in that . . . the claims do not particularly describe and distinctly claim as invention the part, improvement or combination claimed as invention but merely represent an attempt to patent a function or result"

but then sidestepped a consideration of this question by holding at R. 545 that "Questions of invention and patent validity are questions of fact."

Said Decree by the Court of Appeals was in direct conflict with the decisions of this Court in the *Halliburton v. Walker* and the *General Electric v. Wabash* cases.

## POINT II.

Since Claims 6, 7 and 8 of Patent 1,906,260 Were Held Not Infringed by Petitioner's New Fawn Game Because Said New Game Omitted an Essential Element of Said Claims, the Decision of the Courts Below That Claims 9 and 10, Which Include the Same Essential Element, Were Infringed by Said New Fawn Game, Is so Inconsistent on Its Face as to Constitute Such a Departure From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of This Court's Power of Supervision.

The game of the patent in suit is competitive in that the various players play against each other until one player makes a winning combination on his game unit. As soon as a winning combination is made all of the other units are immediately de-energized to prevent further play.

In the new or altered Fawn game, there is no competition between players since a time clock operates the game for a specified time and no units are shut down until a switch is operated by the time clock. This essential difference between the altered Fawn game and the Respondent's game was the basis for the trial court finding that claims 6, 7 and 8 were not infringed. Illustrative of this fact is the statement by the trial court at R. 287 as follows:

"The result is that under the new Fawn game there can be any number of winners and it is possible that no one should win during that time, while under the Gibbs game only one player may win and there is always a winner because the game does not stop until one person has won.

I do not think that claim 6 is infringed (by the new Fawn game) and I think if you read

them the way counsel desires me to read them they would fall under the interdict of the recent decision of the Supreme Court in *Halliburton v. Walker*."

It is abundantly clear that the trial court found claims 6, 7 and 8 not to be infringed because they are limited to a competitive game where when one player wins, the other game units are automatically de-energized, whereas the new Fawn game is not a competitive game because the other game units are not de-energized when a win is made on one unit.

However, after holding claims 6, 7 and 8 *not* infringed by the new game, the trial court held that claims 9 and 10 *were* infringed.

A simple comparison of the last elements of claims 6 and 9 shows that they are each directed to a competitive game in which a win on one unit results in de-energizing or disconnecting all non-winning game units. This result is set forth in claim 6 as follows:

"means whereby when all of the indicators in any group of any of said units have been operated to complete a winning play the indicators on all of the units except the winning unit will be de-energized."

In claim 9 it is described as:

"means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuit of the indicators of all of the other units."

Since claims 6, 7 and 8 were held not to be infringed by the new Fawn game because of the omission of the above-quoted element, it would seem obvious on the face of it that claim 9 likewise can not be infringed since it describes the same element in almost the same language.



It is submitted that the affirmance of these obvious inconsistencies by the Appellate Court constitutes such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

### POINT III.

**That issues of Great Moment to the Public Are Involved and Further Litigation of Patent 1,906,260 Which Might Result in Conflict Between Circuit Courts of Appeals Is Improbable Because Respondent Has Dominated the Field so Thoroughly as to Intimidate Other Operators.**

Patent 1,906,260 having been held valid and infringed, rights of the public are involved in this litigation and in view of the proceedings below, require the action of this Court for the protection of those rights.

"The possession and assertion of patent rights are issues of great moment to the public."

*Precision Instr. Mfg. Co. v. Automotive M. Mach.*,  
324 U. S. 806, 65 U. S. P. Q. 133.

"To sustain claims so indefinite as not to give the notice required by the statute would be in direct contravention of the public interest which Congress therein (R. S., Sec. 4888, 35 U. S. C. A., sec. 33) recognized and sought to protect."

*United Carbon Co. v. Binney & Smith Co.*, 317 U. S. 228, 233, 87 L. Ed. 232, 235.

"To sustain the claims in question upon the established and admitted facts would require a plain disregard of the public interest sought to be safeguarded by the patent statutes, and so frequently present but so seldom adequately represented in patent litigation."

*Muncie Gear Works v. Outboard M. & Mfg. Co.*,  
315 U. S. 759, 768, 86 L. Ed. 1171, 1178.

Where the validity and infringement of a patent are in doubt and where it is improbable that conflict between Circuit Courts of Appeals will occur, due to the fact that only the litigants are engaged in competition thereon, certiorari may be granted.

*Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U. S. 86, 89, 83 L. Ed. 506, 508.

### Conclusion.

The decision of this Court in the case of *Halliburton Oil Well Cementing Co. v. Walker*, 329 U. S. 1, reaffirms a doctrine of long standing on the construction of patent claims. If this doctrine is not to be applied to certain types of claims, the limitations thereon should be applied uniformly. On the other hand, if the doctrine of the *Halliburton* case applies to claims for a combination of mechanical and electrical elements as well as to combinations of mechanical and acoustical elements, rights of the public as well as rights of your Petitioner have been seriously impaired by the decision of the Court of Appeals for the Ninth Circuit.

It is believed, therefore, that the questions of law involved are of great importance and should be determined by this Court.

Respectfully submitted,

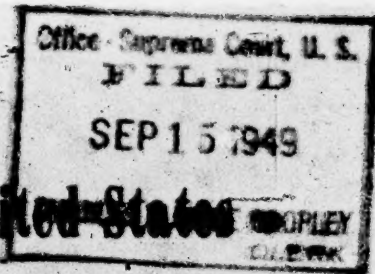
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*Of Counsel.*

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SUPREME COURT, U. S.



IN THE  
**Supreme Court of the United States**

October Term, 1949.

No. 19

TODD C. FAULKNER,

*Petitioner,*

*vs.*

JOHN T. GIBBS,

*Respondent.*

**BRIEF FOR TODD C. FAULKNER,  
PETITIONER.**

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Point I. The claims in suit are invalid under R. S. 4888 and the doctrine of *Halldartou v. Walker*, because they do not particularly point out or distinctly claim the invention, but on the contrary use the functional statements "means for energizing," "means whereby," and "means for discontinuing" at the exact point of novelty. 30

A. The definition of the only element of novelty in Claim 3 by the functional statement "means for energizing the indicators as the associated contact devices are operated," renders Claim 3 invalid under R. S. 4888. 35

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B. Claims 6-10 are also invalid under R. S. 4888 because like Claim 3 they employ functional language to define their only novelty over the Nakashima patent. 42

Discussion of Claim 6. 43

Discussion of Claim 9. 47

Point II. Since Claims 6, 7 and 8 of the Gibbs patent were held not infringed by the new Fawn game because it omitted an essential element of said claims, Claims 9 and 10 which include the same essential element are not, as a matter of law, infringed by the new Fawn game. 49

Conclusion. 53

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IN THE  
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October Term, 1949.

No. 19

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TODD C. FAULKNER,

*Petitioner,*

*v.s.,*

JOHN T. GIBBS,

*Respondent.*

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**BRIEF FOR TODD C. FAULKNER,  
PETITIONER.**

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This is a suit for patent infringement brought by the Respondent John T. Gibbs against Petitioner Todd C. Faulkner in the United States District Court for the Southern District of California, Central Division, alleging infringement of claims 3 and 6-10 of Respondent's Patent No. 1,906,240 for a Game. The District Court held the claims in suit valid and all of them infringed by the game operated by Petitioner at the inception of the suit, but only some of the claims, infringed by a modified form of said game which was also in issue.

The United States Court of Appeals for the Ninth Circuit affirmed the decision of the trial court in all respects and denied a petition for rehearing. Certiorari was thereafter granted by this Court.

## THE OPINIONS OF THE COURTS BELOW.

The opinion of the Court of Appeals for the Ninth Circuit is reported at 170 F2 34, 79 USPQ 158 and appears in Volume III of the Record at pages 538-546.

The District Court's opinion was delivered orally at the close of the trial and appears at pages 282-289 of the Record. It was not reported. For a full understanding of the trial court's reasoning it is necessary to also read pages R. 260-282 which cover the general discussion between Court and counsel preliminary to the rendition of the opinion.

The Findings of Fact and Conclusions of Law of the trial court are found at pages 33-40 of the Record, and the Interlocutory Judgment at R. 41-43.

## JURISDICTION.

The Petition for Certiorari in this case was granted March 28, 1949.

The grounds for jurisdiction are:

1. The Decree of the Court of Appeals was entered October 8, 1948 [R. 547]. Petition for Rehearing was denied November 23, 1948 [R. 548].
2. The Decree was rendered in a suit in equity brought under the patent statutes to determine the issues of validity and infringement of Letters Patent issued by virtue of Revised Statute No. 4888 (35 USC 31).
3. The jurisdiction of this Court is invoked under 28 USC 1254.



## STATEMENT OF THE CASE.

### HISTORY OF THE LITIGATION.

The patent in suit was issued to the Respondent John T. Gibbs on May 2, 1933 for a Game, hereinafter referred to as the "Gibbs game." As stated by the Court of Appeals [R. 539], the Gibbs game in essence, "is an assembly or combination comprising a plurality of electrically interconnected game units, each of which units has the general outward appearance of the well known pinball machine. Each unit is operated by a separate player who competes with players operating the other units in the multiple assembly."

At the commencement of this suit the Petitioner was operating at Long Beach, California, a competitive game called the "Fawn" game. This game is referred to in the Record as the "old" or "original" Fawn game.

Subsequent to the filing of the Complaint herein Petitioner modified his game by incorporating a time clock therein *so that the players no longer competed with each other*, but instead played for a stipulated time controlled solely by the clock. This modified game is variously referred to in the Record as the "new" or "altered" Fawn game.

Thereafter Petitioner filed a Counterclaim [R. 12] praying for a declaratory judgment of non-infringement as to *both* the old and new Fawn games, and invalidity of the Gibbs patent.

At the trial, claims 3 and 6-10 were in issue and the trial judge decreed [R. 42] that all of said claims had been infringed by the old Fawn game. As to the *new* Fawn game, the Court ruled that *only* claims 3, 9 and 10 were infringed, and that claims 6, 7 and 8 were *not* infringed.

There are no specific findings of fact which set forth how or why claims 3, 9 and 10 were held to be infringed by the *new* Fawn game. Likewise nothing appears in either of the opinions below on this subject.

#### THE DISCLOSURE OF THE GIBBS PATENT.

As stated by Respondent in his specification [R. 303] his invention relates to a game "which embodies a plurality of electrically connected units arranged in such a manner that successive plays made by the players on their respective units will be indicated visibly or audibly, and the winning play made by any one of the players on a particular unit will operate to give an additional signal of such winning play and at the same time *discontinue* the signals of the successive plays made on the other units." It is necessary that the non-winning game units be immediately disconnected so as to have only one winner and avoid arguments.

By reference to Fig. 1 of the Gibbs patent [R. 295†] it is seen that each of the game units, of which there may be any number, includes a horizontal game board and a vertically disposed annunciator panel at the rear thereof.

Each game board is provided with a plurality of apertures into which a ball may be rolled by a player. Each of the apertures has a spring contact device S beneath it comprising a pair of contacts 53, 54 which are closed when a ball is dropped into the aperture.

Each annunciator panel includes a plurality of indicator lamps on the face thereof corresponding in number and arrangement with the apertures on each board and electrically connected with the contacts beneath the respective apertures. Each of the contact devices S has associated therewith a relay R with an armature R' for energizing its corresponding indicator lamp. When a ball is dropped into one of the apertures, the contacts 53, 54 underneath that aperture are momentarily closed to operate their relay R, which by virtue of its armature R', in turn energizes its corresponding indicator lamp.

The apertures in the game board are arranged in groups, and a winning play is made when a player has dropped the ball into all of the apertures of any group. In the form of the Gibbs game illustrated in his patent the indicators are grouped in vertical and horizontal rows so that a win is made when a row is completed. There are twenty-five indicators in all and a contact device and relay for each.

The units are electrically connected so that when a player has dropped a ball into all of the apertures of any one group or line of apertures on his particular unit, "supplementary audible and visible signals will indicate the winning play, and *simultaneous therewith* all of the indicators on the other units *will be de-energized* and only the indi-

cators on the winning unit will remain energized." [R. 303, lines 68-73.]

In Exhibit B [R. 371] which is an enlargement of Fig. 6 plus a portion of Fig. 10 of the Gibbs patent, the brown line traces the circuit for the relay R associated with the indicator number 1. Similar circuits for the other relays R are also provided. When the five relays R of the top row have all been operated to energize their respective indicator lamps, the win circuit shown in red is completed.

Whenever a win circuit is completed by energization of five relays in a row, horizontal, vertical or diagonal, a *win lamp L* at the top of the annunciator on the winning unit is illuminated. Also a holding relay R3 is energized, setting up the auxiliary circuit shown in green in Exhibit B, which causes the bell 69 to ring and all of the other game units to be de-energized.

It is thus seen that whenever a win circuit is completed, for example, a horizontal line of five as illustrated in red in Exhibit B, or a vertical line of five as illustrated in blue, or a diagonal line of five as illustrated in yellow in said exhibit, *supplementary means in the form of win light L and bell 69* are actuated and the indicators on all of the other units are *de-energized*, while the indicators on the winning unit remain energized.



## THE CLAIMS IN SUIT.

Claim 3 is a sub-combination claim directed to the construction and operation of a *single unit* of the Gibbs game as illustrated in Figs. 1 and 6 of the patent [R. 295 and 297]. Claims 6-10 are directed to the entire game comprising a plurality of said individual units interconnected so that a win on one unit will disconnect the rest as illustrated in Fig. 10 of the patent [R. 301].

To facilitate ready consideration of the claims we reproduce them here in outline form.

### CLAIM 3.

#### 3. A game apparatus comprising

- (a) a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators, means for electrically connecting said indicators with a source of electric current and with said contact devices, said indicators and said contact devices corresponding in number and arrangement and sub-divided into corresponding groups,
- (b) *means for energizing* said indicators as the associated contact devices are operated,
- (c) an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized,
- (d) and *supplementary means for indicating* a winning play when all of the indicators in one of said groups have been energized.

The Court's attention is respectfully called to the fact that claim 3 is couched in very general language.

For example, the board of element (a) above is *not* specified to have any apertures therein, but on the contrary, the contact devices are merely said to be located on the board.

Further, with respect to element (a) the indicators are not specified as lamps, but merely as indicators, which literally includes movable means and other devices for conveying intelligence.

Likewise neither the indicators nor the contact devices are limited in number or arrangement, it merely being specified that they shall correspond. In other words, *they are not limited to five rows of five* as illustrated in the Gibbs drawing, but may include three rows of three or any other combination, such as four rows of five, or six circles of 10, so long as they correspond.

Element (b), it should be noted, is defined entirely in functional language as "means for energizing" with no particularity as to the means.

Likewise, as to element (d) "supplementary means for indicating a winning play" may include a win lamp, a bell, or any other *supplementary* indicating or signalling means operated in any manner whatsoever to show that a win has been accomplished.

CLAIM 6.

6. A game apparatus comprising a plurality of units electrically connected together,

- (a) each of said units including a plurality of contact devices and a plurality of indicators corresponding in number and subdivided into corresponding groups,
- (b) *means for* electrically connecting the contact devices with the corresponding indicators, \* said indicators *adapted to be operated when and as* objects are moved by the players into engagement with the contact devices,
- (c) *means for* electrically connecting said units together and with a source of electric current,
- (d) and *means whereby* when all of the indicators in any group of any one of said units have been operated to complete a winning play, *the indicators on all of the units except the winning unit will be de-energized, while the indicators at the winning unit will remain energized, for the purpose described.*

With respect to claim 6 it is to be noted that *it does not even specify a game board.* It is merely stated in element (a) that there are a plurality of contact devices and a plurality of indicators. *Nothing is said as to their location with respect to each other, whether they are hori-*

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\*Note: For clarity, element (c) has been transferred from this point to its present position in the outline.

zontal or vertical or whether the contact devices are associated with holes in a board, targets to be shot at, or darts to be thrown.

Element (b) does not even say means for energizing indicators, but merely states broadly that the indicators are "*adapted to be operated* when and as objects are moved," etc. This can include an extremely wide range of indicators and means for operating them.

Element (d) is likewise couched in *functional* language, merely specifying "means whereby" etc. In so far as the wording of the claim goes these means may be electrical, mechanical, acoustical, hydraulic, pneumatic or any other means of any shape, character, or fashion whatsoever now known or hereafter to be discovered which will accomplish the result stated in the claims.

Claim 7 is dependent upon claim 6, merely adding thereto the "independent supplementary signal" for indicating a win.

Claim 8 is likewise dependent on claim 6 and adds thereto the win signal of claim 7 plus "*means* under the control of an operator for opening and closing the circuits of all of said units simultaneously at will." This is the main power switch that all such games have as a matter of course.

Claims 7 and 8 do not amplify or particularize any of the functional statements of claim 6, or supply any of the above-discussed elements missing therefrom. Consequently claims 7 and 8 must stand or fall with claim 6.



CLAIM 9.

9. A game apparatus comprising a plurality of electrically connected units,

- (a) each including a game board with a plurality of apertures therein, and an annunciator with a plurality of indicators thereon,\* said indicators and said apertures corresponding in number and subdivided into corresponding groups,
- (b) [electrical contacts adjacent each of said apertures connected in the circuits of said indicators,] *whereby when* objects are deposited in said apertures by the players at the several units, corresponding indicators will be energized,
- (c) a *supplementary* signal circuit on each of said units, and *means for holding* said signal circuit open until all of the indicators of any group on each of said units have been energized, *and for closing* said signal circuit when all of the indicators of any unit have been energized,
- (d) and *means* controlled by the closing of the signal circuit of the winning unit *for discontinuing* the signals and opening the circuits of the indicators on *all other* units.

Claim 9 is more specific than claim 6 as to element (a), for it specifies *a game board with a plurality of apertures therein*, whereas claim 6 does not specify a board at all or any apertures at all. However, again it is to be noted that neither the number nor pattern of the indicators or contact devices is specified. They can be in rows, circles,

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\*Note: The part of element (b) in [ ] has been transferred from this point to its present position in the interest of clarity.

stars or cubes so far as the wording of the claim is concerned. Likewise the indicators are not specified to be lamps.

As to element (b), claim 9 uses practically the same functional language as claim 6, merely specifying a result to be accomplished.

Element (d) specifies "means for discontinuing," the only limitation of such means being that they be "controlled by the closing of the signal circuit." In so far as the terms of this claim go this means could be electrical, mechanical, hydraulic or any other type as desired.

Claim 10 is dependent upon claim 9 and merely adds thereto "an audible signal commonly connected with all of said units and *adapted to be operated* upon the closing of the supplementary signal circuit of any of said units." Hence claim 10 must stand or fall with claim 9 because it does not amplify or particularize any of the functional language used in claim 9.

With respect to all of the Gibbs claims it should be noted that not one is limited to a ball, all using the broad word "object" which of course can include all kinds of things, such for example as the weighted peanuts shown in the Hayashi patent hereinafter mentioned.

Likewise there is nothing in any of the claims specifying whether or not one, or a plurality of, *objects* is to be used. Even in claim 9 which is the only claim specifying apertures in the game board, it is *not* mentioned whether or not the balls *pass through* the apertures *or are retained therein*. It is merely stated that when objects are deposited in the apertures the indicators will be energized. The "means" for accomplishing this result is, however, left to conjecture.

### THE PRIOR ART.

Respondent admits on page 3 of his Brief opposing the Petition for Writ of Certiorari that the Gibbs patent "utilizes old elements such as playing boards with holes therein, annunciator panels with electric lights, electrical switches, relays and circuits." That these elements, as well as various combinations thereof, were old in the art prior to Gibbs is fully borne out by the prior art patents of record in this case.

At the time Gibbs made his invention it was old and well known in the art to combine a playing board having a plurality of holes and contact devices with an annunciator panel having a plurality of indicator lights, and to electrically connect the contact devices and indicators whereby the indicators would be energized when a ball was rolled into any one of the holes on the playing board. Such games are shown by Nakashima, Hayashi and other patents of record. It was also old as shown by Nakashima to provide supplementary signal means for indicating a win.

Similarly it was old and well known when Gibbs made his invention to electrically interconnect a plurality of game units, each of which units had electrical contact devices which would energize indicator devices whereby the players could visually watch the progress of their play. The patents to Chester, Prina, Wallace, Higuchi and others illustrate these features and all disclose electrical circuits whereby when a win is accomplished on one game unit, all of the non-winning units are automatically disconnected, preventing further play thereon.

The Court's attention is particularly called to the fact however that the Patent Examiner who handled the Gibbs

application did not cite a single patent showing a competitive group game made up of a plurality of units wherein a win on one unit automatically disconnects all of the other units.

The prior art patents will now be abstracted in the order of their appearance in the Record.

### SINGLE-GAME PATENTS.

Nakashima Pat. No. 1,678,573 [R. 376-381].

The patent to Nakashima discloses a game apparatus (see Figs. 1, 2 and 3) comprising a board with a plurality of apertures therein arranged in rows, nine of which apertures have electrical spring contact devices therebelow adapted to be closed by a ball rolled over the board and into the apertures. The other apertures are merely hazards as stated in the specification. Nakashima also has an annunciator panel with nine electric indicator lamps thereon, the indicators and contact devices thus *corresponding in number*. The indicator lamps of Nakashima are electrically connected to a source of electric current and to said contact devices, and are energized as their associated contact devices are operated. An electrical circuit is also provided (see Fig. 4) which remains open until *all of the indicators* of any one of the groups have been energized, whereupon the circuit becomes effective to operate *supplementary signal means* in the form of a bell 14 to indicate that a winning play has been made.

Hayashi Pat. No. 1,614,471 [R. 383-390].

This patent discloses a game of the type shown by Nakashima and Gibbs having a board with a plurality of apertures into which a rolling object may fall, and an



annunciator board with a plurality of indicator lamps thereon. Each indicator is electrically connected to a spring contact device beneath an aperture and is energized as its associated contact device is operated by an object (peanut) falling therein. The indicators and contact devices correspond in number *and arrangement* and are subdivided into vertical and horizontal rows, the scores being dependent upon which group of indicators is energized during the play.

**Esmarian Pat. No. 1,618,912 [R. 391-395]**

Esmarian also shows a game board with a plurality of apertures adapted to receive a ball rolling across the board, each of said apertures having a spring contact device beneath it to be operated by a ball passing into the aperture. An annunciator panel is provided at the back of the game board having a plurality of indicator lamps *corresponding in number to the apertures in the playing boards*. The indicators are electrically connected with the contact devices so that the indicators are energized when and as objects are moved by the players into engagement with the contact devices *to operate the same, i. e., when objects are deposited in said apertures, the corresponding indicators will be energized.*

**Mader Pat. No. 1,622,330 [R. 397-405]**

Mader likewise shows a game board with a plurality of apertures therein beneath each of which is a spring contact device in the form of a pair of resilient contact members. At the rear of the game board is an annunciator panel having four rows of five indicator lamps *arranged in horizontal and vertical lines as in the Gibbs patent*. As in the other prior art patents and in the Gibbs patent, the

indicators are connected with a source of electric current and with said contact devices whereby they are energized as their associated contact devices are operated by engagement of a ball therewith.

**Schneider Pat. No. 1,788,336 [R. 408-410]**

Schneider shows a game board provided with a plurality of apertures at its rear end and a plurality of indicator lamps corresponding in number and arrangement with the apertures with the exception that the apertures are vertically aligned, whereas the indicators are horizontally aligned. Each of said apertures is provided with a movable contact device in the form of a balanced paddle assembly immediately there below adapted to be engaged by a ball falling through the aperture whereby its associated indicator is energized. While none of the Gibbs claims specify that a single ball shall be used in playing his game, it is to be noted that *the Schneider patent uses a single ball which returns to the player after it has actuated the contact device and energized the corresponding indicator lamp.*

**McGregor Pat. No. 1,260,691 [R. 411-421]**

McGregor discloses an electrically operated target apparatus provided with a plurality of relays successively operated to make up segments of a circuit so that when all of the relays have been operated a control relay will disconnect one circuit and make another. These circuits are very similar to the relay circuits used in the Gibbs game.

PRIOR ART GAMES IN WHICH PLAYERS COMPETE  
WITH EACH OTHER.

Chester Pat. No. 1,598,711 [R. 424-434].

The Chester patent is the first of the *competitive* game patents in the Record, not one of which was cited against Gibbs by the Patent Office. Chester shows a *plurality of electrically interconnected individual game units, each operated by an individual player*. Each game has a contact device operated by a wheel, and indicating means in the form of a pair of dancers which advance around a circular track as they are successively energized by the contact devices. Thus the position of the dancers gives a visual indication of the progress of the play at all times. When the dancers reach their goal, a win has been accomplished. Means are provided in the form of a win switch and relay whereby *when a win has been made on any one of said units all of the units except the winning unit will be de-energized, and a signal lamp at the winning unit will be energized to indicate the win*. The near identity between the electrical circuits of the Gibbs and Chester games is evident from a comparison of the diagrams of Exhibits G and H [R. 529 and R. 531, respectively].

Wallace Pat. No. 1,697,701 [R. 436-447].

This patent covers the apparatus referred to by Gibbs in his testimony as the "grunt derby" [R. 76, 147] and is *the competitive game which he was operating when he made the alleged invention of the patent in suit*. The Wallace game provides a *plurality of electrically interconnected game boards, each provided with a plurality of apertures therein beneath which is a spring contact device*

common to all of the apertures. Each of the Wallace game boards is provided with a sloping panel at the rear thereof having a movable indicator which is operated when and as balls are moved by the players into engagement with the contact devices. In the Wallace game the indicator is in the form of a pig which travels up a miniature race track, the electrical connections being such that when the contact device beneath the apertures is operated by a ball passing through the aperture, the motive means of the indicator is energized to incrementally move the indicator along the track to a new position. Means are provided whereby when the winning or final play has been made on one unit and the pig has reached his goal, *all of the units except the winning unit are de-energized.* Also supplementary signal means in the form of a win lamp and a bell are operated to indicate the end of the game.

**Higuchi Pat. No. 1,454,968 [R. 450-467].**

This patent illustrates the competitive game known as the "Coney racer" with which Gibbs admitted [R. 76] he was familiar at the time he designed his own game. The Higuchi game is similar to the Wallace pig game, but the indicators are in the form of rabbits moving along a track. The indicator device in each game unit is electrically connected with a source of current and a contact device which is operated by the player manipulating a ball through the medium of a catapult. Whenever the contact device is operated by the ball falling thereon the indicator device is energized, causing it to move another notch toward the goal. Supplemental means in the form of a win lamp is provided for indicating a winning play. As mentioned, the indicators (rabbits) are

adapted to be operated when and as objects are moved by the players into engagement with the contact devices, and means are provided whereby when the indicator of any one of said units has been operated to complete a winning play the indicators on all of the units except the winning unit will be de-energized.

**Prina Pat. No. 1,518,754 [R. 470-484].**

Prina shows a competitive game made up of a plurality of units electrically connected together, each unit operated by a separate player, the results of the player's progress being "made manifest along a visible field and preferably by means of a progressive series of lamps for each unit" [R. 477].

Each game unit is provided with a manipulator comprising a wheel connected to a contact shoe which engages contact devices in the form of buttons, each of which is connected to an *indicator lamp*. As the contact devices are operated their associated indicator lamps are energized. In other words, *Prina has a plurality of contact devices electrically connected to a plurality of indicator lamps*; said indicators and contact devices *corresponding in number and arrangement* with means being provided for energizing said indicators as the associated contact devices are operated. An electrical circuit is provided which is open until all of the indicators of one of said units have been energized, and *supplementary means in the form of a win light* indicates a winning play when all of said indicators have been energized.

Prina also shows electrical means whereby when all of the indicators of any unit have been operated to complete a winning play the indicators on all of the units except the winning unit will be de-energized, while the indicators at the winning unit will remain energized.



Irsch Pat. No. 1,458,884 [R. 486-494].

This patent shows another competitive game wherein a plurality of individual game units are electrically connected together in such manner that when a win is made on one unit the win signals on the other units are disconnected. Each unit comprises a lever to be manipulated by the player so that he can advance a duck along a track. When one player causes his duck to travel the full length of the track and deposit an egg into a cup or nest an *annunciator light is illuminated* and the signals for the other units are incapacitated.

### The Original Fawn Game.

Petitioner's original Fawn game is shown best in the photographs [R. 325-339], the wiring diagram [R. 341] and the colored perspective drawings of Exhibit F [R. 527]. As seen from the above-mentioned exhibits, the original Fawn game comprises a number of game units, each having a board with a plurality of apertures therein *arranged in two transverse rows*, and an annunciator panel at the rear of the board having a similar number of indicator lamps *but arranged in five rows instead of two*. Below each of the apertures is a "see-saw" switch arm in the form of a balanced paddle adapted to be engaged by a ball passing through the aperture. Once the paddle is depressed by the ball it stays in that position until the game is over, thus maintaining its corresponding indicator lamp illuminated.

Referring particularly to Exhibit F [R. 527], the upper figure illustrates the position of the various mechanical parts of the Fawn game prior to the operation of any of the paddles. The paddles are colored yellow and their rear ends act as stops against which pins of the

wheels (both colored red) bear, and as long as the paddles remain with their rear ends down, the wheels are prevented from rotation [R. 184].

Extending across in front of all of the wheel pins is a win bar colored green, the lower end of which carries the small glass-enclosed mercury switch M. As the forward ends [the far ends in Exhibit F] of the paddles are moved downwardly, their rear ends will assume the position shown in the lower figure in Exhibit F [R. 527] where it will be seen that the rear ends of the first five of the paddles have been raised and have released the wheel pins previously held by them. Release of the fifth red pin permits a spring-operated cross bar colored blue to be pulled forwardly to move all of the vertical red pins against the green win bar which is thereby rocked forwardly sufficient to close the mercury switch M.

It will be understood that the blue win bar cooperates only with the five wheels which correspond to the row of five lights across the top of the annunciator, this being used for illustrative purposes. Since twelve win light combinations are possible, twelve cross-bars are provided, one for each possible combination of five wheels and lights. Selector pins are also provided which need not be described here.

One of these additional cross-bars, shown in brown in Exhibit F, is for producing one of the possible vertical combinations and extends across the machine to engage the pins on the wheels which correspond to these vertical lights. When the paddles for this vertical line of lights have released their pins the brown bar will swing forward and in so doing will move its five pins on the wheels corresponding to its particular line of vertical lights into

engagement with the green win bar to swing the same forward and close the mercury switch M.

A third cross-bar which has been colored purple extends across all of the wheels and engages pins that will be on those wheels which are associated with a diagonal line of lights so that when those wheels are released by operation of their paddles the purple cross-bar will swing forward to move the green win bar forward to close the mercury switch.

### **The New Fawn Game.**

The new or altered Fawn game retains the paddle and wheel mechanism of the original game, *but omits the win light on top of the annunciator panels and changes the electrical circuits so as to make the game non-competitive.* In the altered Fawn game a win on one unit does *not* de-energize or disconnect any other game units, but on the contrary, all players are allowed a *stipulated time* in which to try to effect a win.

The stopping of the game is controlled *solely by a time clock* which is started at the beginning of the game and continues for a predetermined time period. At the end of this time period the clock opens the main power switch, stopping the entire game for all players regardless of whether or not a win has been made. There may therefore be several winners or no winners. The wiring diagram for the time clock is found in Exhibit J [R. 535] from which it is seen that the entire operation of the game has been completely changed.

*The trial court found that the above mentioned changes in the new Fawn game made it non-competitive, and consequently ruled that it did not infringe claims 6, 7 and 8.*

This ruling by the trial court was not appealed by the Respondent.

As mentioned, the new Fawn game does not have a win light or bell or other supplementary means for indicating a winning play as called for in claim 3 of the Gibbs patent. The need for such is of course not present in a non-competitive game, since the players play against a clock rather than against each other.

### RELEVANT STATUTES.

The statutes under which this case arises which are necessary to be considered are as follows:

*Revised Statute, Section 4886 (35 U. S. C. 31):*

"Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, . . . not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

*Revised Statute, Section 4888 (35 U. S. C. 33):*

"Before any inventor or discoverer shall receive a patent for his invention or discovery he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and

process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery . . . .”

## THE QUESTIONS OF LAW INVOLVED.

*Question 1*—Is the doctrine of *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6, 71 USPQ 175, condemning the use of indefinite and functional language at the exact point of novelty in patent claims for a combination of mechanical and acoustical elements, applicable to claims for a combination of mechanical and electrical elements where the only feature of novelty in the claims is described broadly in terms of “means,” or is said decision to be ignored as was done by the Court of Appeals in this case?

*Question 2*—Where a court holds an accused apparatus not to infringe certain patent claims because said apparatus does not include an essential element of said claims, is it not contrary to fundamental law and logic for the court in the same decision to hold other claims of said patent which specify the *same essential element*, infringed by the said accused apparatus?



## SPECIFICATION OF ERRORS.

Petitioner urges that the Ninth Circuit Court of Appeals erred:

1. In failing to reverse the Decree of the District Court holding the Gibbs Patent No. 1,906,260 valid and infringed by Petitioner;

2. In holding the Gibbs Patent No. 1,906,260 to be valid;

3. In holding the Gibbs Patent No. 1,906,260 to have been infringed by Petitioner;

4. In failing to hold that the law established by the decisions of this Court in *Halliburton Oil Well Cementing Company v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6, 71 USPQ 175, and *General Electric Company v. Wabash Appliance Corp.*, 304 U. S. 364, 58 S. C. 899, were controlling and dispositive of the litigation;

5. In holding that claims 3, 6, 7, 8, 9 and 10 of Gibbs Patent No. 1,906,260 define the alleged improvement thereof with sufficient distinctness and clarity to comply with Revised Statute 4888, which requires a patentee to "particularly point out and distinctly claim the part improvement or combination which he claims as his invention or discovery."

## SUMMARY OF ARGUMENT.

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### POINT I.

The Claims in Suit Are Invalid Under R. S. 4888 and the Doctrine of *Halliburton v. Walker*, Because They Do Not Particularly Point Out or Distinctly Claim the Invention, but on the Contrary Use the Functional Statements "Means for Energizing," "Means Whereby," and "Means for Discontinuing," at the Exact Point of Novelty.

The requisite of definiteness in claims is a statutory requirement. This Court has consistently enforced this requirement. The public is entitled to know the exact scope of the monopoly granted to the patentee.

*General Electric Co. v. Wabash Corp.*, 304 U. S. 364, condemned the use of functional language in product claims.

*Halliburton v. Walker*, 329 U. S. 1, condemned the use of functional language in combination apparatus claims. The claims involved in the *Halliburton* case were for a combination of mechanical and *acoustical* elements.

The lower courts refused to apply the *Halliburton* rule to the claims here in suit which are for a combination of mechanical and *electrical* elements. Hence this appeal.

The claims here in suit are on all fours with the claims held invalid in the *Halliburton* case for failure to meet the requirements of R. S. 4888. Hence the Gibbs claims are *also* invalid under the statute.

Respondent has committed himself, and has been committed by the courts below, to a literal interpretation of his functional claims. He is not now entitled to have his claims judicially narrowed to save them from the statute.

Respondent by the use of his functional claims has been enabled to extend his monopoly beyond the true scope of his invention, if any, and thus prevent the use by others of otherwise unpatented machines. Such undue extension of the patent monopoly has been consistently condemned by this Court.

- A. The Definition of the Only Element of Novelty in Claim 3 by the Functional Statement "Means for Energizing the Indicators as the Associated Contact Devices Are Operated," Renders Claim 3 Invalid Under R. S. 4888.

Claim 3 is a sub-combination claim to one of the individual units which when assembled in a group comprise the Gibbs game.

As functionally drawn, claim 3 reads on the Nakashima game as well as on the Gibbs game. The only possible novelty of Gibbs as defined in claim 3 over Nakashima resides in the element

"means for energizing, etc."

The Halliburton case condemned as functional the element:

"means \* \* \* for tuning."

If one phrase is functional so is the other. Therefore Gibbs claim 3 is void under R. S. 4888 the same as Walker.

Respondent's contention that he is outside the Halliburton doctrine because he has a *combination* claim with *three* functional statements *instead of one* as in Walker is untenable. The Halliburton decision applies to *all* combination claims!

If claim 3 were in non-functional language as required by the Statute it could not be infringed by either Fawn game, since they do not employ relays to energize their indicators.

The new Fawn game does not infringe claim 3 in any event because it has no win light or bell.

**B. Claims 6-10 Are Also Invalid Under R. S. 4888. Because Like Claim 3 They Employ Functional Language to Define Their Only Novelty Over the Nakashima Patent.**

These claims purport to cover the assembly of a plurality of the Gibbs individual game units.

The first part of each claim reads on Nakashima, and the second part reads on the competitive game patents to Chester, Higuchi, Wallace and Prina. Parts II of claims 6 and 9 are purely functional in their language. Therefore, *the only novelty* in the claimed combination over Nakashima is stated in conveniently functional language.

Hence claims 6 and 9 and their dependent claims 7, 8 and 10 are invalid under R. S. 4888.

If these claims were written in non-functional language they would not be infringed by either Fawn game.

## POINT II.


Since Claims 6, 7 and 8 of the Gibbs Patent Were Held Not Infringed by the New Fawn Game Because It Omitted an Essential Element of Said Claims, Claims 9 and 10 Which Include the Same Essential Element Are Not, as a Matter of Law, Infringed by the New Fawn Game,

The failure of the lower courts to hold claims 9 and 10 not infringed by the new Fawn game, either:

- (1) raises a novel point of law, or
- (2) requires instruction to the lower courts as to the existing law.

The Trial Court found the Gibbs game to be competitive. The Court found the new Fawn game *not* to be competitive because it was clock-operated. Therefore it found no infringement of claim 6 because it claimed a *competitive* game.

But claim 9 *also* claims a *competitive* game in language almost identical with claim 6. Therefore it was clear error not to hold claim 9 and its dependent claim 10 *not* to be infringed.





## ARGUMENT.

The Claims in Suit Are Invalid Under R. S. 4888 and the Doctrine of Halliburton v. Walker, Because They Do Not Particularly Point Out or Distinctly Claim the Invention, but on the Contrary Use the Functional Statement "Means for Energizing," "Means Whereby," and "Means for Discontinuing," at the Exact Point of Novelty.

The requisite for definiteness in the specification and claims of a patent is statutory.

R. S. 4888 provides that:

"Before any inventor or discoverer shall receive a patent for his invention or discovery, \* \* \* he shall *particularly point out and distinctly claim* the part, improvement, or combination which he claims as his invention or discovery. \* \* \*"

The doctrine that patent claims must be definite, clear and unambiguous has been consistently followed by this Court. In the early case of *Merrill v. Ycomans*, 94 U. S. 568, 573, it was said:—

"The developed and improved condition of the patent law, and of the principles which govern the exclusive rights conferred by it, *leave no excuse for ambiguous language or vague descriptions*. The public should not be deprived of rights supposed to belong to it, without being clearly told what it is that limits these rights. \* \* \* *It seems to us that nothing can be more just and fair, both to the patentee and to the public, than that the former should understand, and correctly describe, just what he has invented, and for what he claims a patent.*" (Emphasis added.)

The *Merrill v. Yeomans* case was cited with approval many years later by Mr. Justice Brandeis in the case of *Permutit Co. v. Graver Corp.*, 284 U. S. 52, 60, with the statement that:

"The statute requires the patentee not only to explain the principle of his apparatus and to describe it in such terms that any person skilled in the art to which it appertains may construct and use it after the expiration of the patent, *but also to inform the public during the life of the patent of the limits of the monopoly asserted*, so that it may be known which features may be safely used or manufactured without a license and which may not." (Emphasis added.)

While the soundness of this general rule has never been seriously disputed, the scope to be attributed to the terms of the statute has often risen to plague the courts and litigants. The matter of functionality in claims, particularly where that functionality is at the exact point of novelty, has been the subject of many and diverse rulings in the past.

The controversy insofar as it applied to product claims, was finally settled by the decision of this Court in *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364, 37 U. S. P. Q. 466, in which case Mr. Justice Reed, speaking for the Court, said:

"\* \* \* But the vice of a functional claim exists not only when a claim is wholly functional, if that is ever true, but also when the inventor is painstaking when he recites what has already been seen, and then uses *conveniently functional language* at the exact point of novelty."

However, since the *General Electric* case involved only product claims, the question soon arose as to whether or not the rule enunciated therein applied to apparatus claims.

This further question was definitely resolved in the case of *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 71 U. S. P. Q. 175, wherein this Court speaking through Mr. Justice Black stated as follows:

"The language of the claim thus describes this most crucial element in the 'new' combination in terms of *what it will do rather than in terms of its own physical characteristics* or its arrangement in the new combination apparatus.

\* \* \* \* \*

"Patents on machines which join old and well-known devices with the declared object of achieving new results, or *patents which add an old element to improve a pre-existing combination*, easily lend themselves to abuse. And to prevent extension of a patent's scope beyond what was actually invented, Courts have viewed claims to *combinations and improvements* or additions to them with very close scrutiny. \* \* \*

(Emphasis added.)

In pointing out that the requirement for definiteness in claims was not a new doctrine and that it applied particularly to machines which were a combination of old elements, the Court further stated:

"These principles were again emphasized in *Merrill v. Ycomans*, 94 U. S. 568, 570, where it was said that '... in cases where the invention is a *new combination of old devices*, he (the patentee) is bound to describe with particularity all these old devices, and then the new mode of combining them, for which he desires a patent.' This view has most recently been

reiterated in *General Electric Co. v. Wabash Electric Co., supra*. Cogent reasons would have to be presented to persuade us to depart from this established doctrine. The facts of the case before us, far from undermining our confidence in these earlier pronouncements, re-enforce the conclusion *that the statutory requirement for a clear description of claims applies to a combination of old devices.*" (Emphasis added.)

The Walker patent involved in the *Halliburton* case was concerned with locating the fluid level in a well and included means for creating a pressure wave in the well and a system for recording on a chart the time when the wave was initiated and the time when echoes returned from obstructions in the well. This broad concept was old when Walker entered the field, having been previously disclosed in a patent issued to Lehr and Wyatt in 1936.

The novelty of the Walker patent resided in the *addition* to the Lehr and Wyatt structure of an adjustable pipe which functioned as an acoustical tuned resonator so that better records could be made of echoes from tubing collars. This latter element which constituted the sole novelty in the Walker patent over the Lehr and Wyatt disclosure was described in the claim as:

*"means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing section to clearly distinguish the echoes of said couplings from each other."*

The Walker apparatus was a *combination* of *mechanical* and *acoustical* elements. The *Halliburton* case is therefore final and decisive authority for the proposition that

conveniently functional language at the exact point of novelty in *mechanical-acoustical* combinations is fatal to the claim.

It would seem that the Halliburton decision should have been accepted as applicable to *any apparatus claim* involving a combination of old elements. That this has not been the case is demonstrated by the fact that the lower courts in this case failed to apply the Halliburton doctrine to claims for a combination of *mechanical* and *electrical* elements.

It is difficult to conceive of claims more clearly on all fours with the claims in the Halliburton case than those of the patent in suit herein.

The single feature of novelty in the Walker claims was described as "means for tuning." Similar language is used in the Gibbs claims. For example, Gibbs' claim 3 describes the *single element of novelty* over the Nakashima patent as "means for energizing," but the only *means for energizing* disclosed in the Gibbs patent are the electrical relays R and their associated armatures R'. These relays which are a critical part of respondent's apparatus are even more indefinitely referred to in claims 6-10.

Claims 6-10 use the functional statements "means whereby" and "means for discontinuing" when describing the manner in which the individual game units are interconnected to make the complete assembly operable.

It is petitioner's belief that this Court did *not* mean to restrict the Halliburton doctrine to that small class of apparatus patents involving combinations of mechanical and *acoustical* elements, but that on the contrary this Court meant to and did *condemn the use of functional language in all kinds of apparatus claims, including combinations of mechanical and electrical components.*



- A. The Definition of the Only Element of Novelty in Claim 3 by the Functional Statement "Means for Energizing the Indicators as the Associated Contact Devices Are Operated," Renders Claim 3 Invalid Under R. S. 4888.

Claim 3 is a *sub-combination* claim to the *individual* playing units. Each of the Gibbs game units has a playing board with rows of holes therein and an annunciator backboard with an indicator light thereon for each of said holes. When a ball is rolled into any one of the holes on the playing board a contact device beneath the hole is operated and the corresponding indicator lamp on the annunciator panel is energized. The indicator remains energized during the balance of the play in order to give visual evidence of the progress thereof. Each unit also includes an open electrical circuit which is closed when a win has been made, and *supplementary* signal means in the form of a light or bell for indicating said win.

This precise game unit is fully disclosed by the Nakashima patent [R. 378].

Respondent argued in opposition to the Petition for Certiorari that his game was distinguishable from Nakashima because he (Gibbs) uses only one ball and twenty-five lights whereas Nakashima uses three balls and nine lights. The answer to this contention is of course that *claim 3 does not specify any particular number of balls or lights whatsoever*. As a matter of fact, claim 3 does not even specify holes in the game board.

Gibbs also seeks to distinguish his game from that of Nakashima because his indicators and contacts correspond in arrangement and are sub-divided into corresponding groups. But if this is a material difference, then there can be no infringement by Petitioner since *his* indicators and contacts *likewise do not* correspond in arrangement and are *not* subdivided into corresponding groups. As a matter of fact, neither do those of Respondent's licensee in Long Beach.

Considering now the wording of claim 3 as previously outlined herein we see that the claim calls for an individual game unit, the first element of which is:

- (a) a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators, means for electrically connecting said indicators with a source of electric current and with said contact devices, said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups.

Referring to the Nakashima drawings [R. 376-378], we see that Nakashima meets the terms of the above element in that he provides a board 6 having spring contacts 18, 19 on the under side thereof, balls 10, a plurality of indicator lamps 12 corresponding in number to the contact devices, and wiring connecting said indicators and lamps with each other and with a source of current. Additionally, Nakashima shows apertures in his game board as used by Gibbs but not included in claim 3.

Referring to Fig. 4 of Nakashima [R. 378] we see that elements (c) and (d) of claim 3, to-wit,

- (c) an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized, and
- (d) supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized.

are also clearly present in Nakashima. The bell 14 in Nakashima is the supplementary signal means of element (d) and the circuit therefor, terminating in the transformer winding 433, is the circuit called for in element (c).

Thus we see at the outset that Nakashima clearly anticipates elements a, c and d of claim 3. This leaves only element (b) upon which patentability may be predicated.

The parallel between claim 3 and the claims in the Halliburton case is obvious.

While the indicators of Nakashima are "energized as their associated contact devices are operated," as called for in element (b) of claim 3, Nakashima does not employ *separate* means for this purpose as does Gibbs. Nakashima maintains his indicators energized by the simple expedient of permitting the playing balls to remain in contact therewith. (Which meets the literal terms of element b).

The only possible feature of novelty in the game unit described in Gibbs' claim 3 is the *separate means* (Gibbs relays R) for maintaining the indicator lamps energized.

Nakashima did not need separate means because he maintained his indicators energized by keeping their respective contact devices closed. Gibbs, however, employing a switch that is only *momentarily* closed *must* have *separate* means for *maintaining* his indicators energized. This separate means defined functionally in element (b) is found in the relays R of the Gibbs game.

We come inescapably to the conclusion therefor that the only possible novelty in the Gibbs game as defined in claim 3 over the Nakashima patent resides in the use of relays R which are described in said claim as:

*"means for energizing said indicators as the associated contact devices are operated."*

In the Halliburton case the only element not found in the prior Lehr and Wyatt patent was Walker's adjustable pipe. In the claims this was described as:

*"means \* \* \* for tuning said receiving means to the frequency of echoes from the collars of said tubing sections."*

On the face of it the quoted statement from Gibbs' claim 3 is *even more functional* than the quoted statement from the Walker claims.

It is readily apparent therefore that claim 3 does not meet the requirements of R. S. 4888 because it uses "conveniently functional language at the exact point of novelty."

But says Respondent, the Halliburton decision does not apply to me because I have a *combination* claim. I have

*no single element of novelty. All of my elements are old and I claim a patentable combination thereof.*

The obvious answer to this contention is present in the previously quoted excerpts from the *Halliburton v. Walker* case one of which states:

"Patents on machines which join old and well known devices \* \* \* or patents which add an old element to improve a pre-existing combination, easily lend themselves to abuse.

\* \* \* in cases where the invention is a *new combination of old devices* he (the patentee) is *bound to describe with particularity* all these old devices, and then the new mode of combining them for which he desires a patent." (Emphasis added.)

There is nothing whatsoever in the *Halliburton* case to indicate that it meant to exclude claims for a combination of *old* elements where one or more of the elements is defined in *functional* language.

The Respondent himself has divided claim 3 into eight elements, of which *three* are described functionally as "means," one of these three being the above-discussed "means for energizing." Certainly the Gibbs claim 3 cannot escape the Halliburton doctrine merely *because it has three* functional statements in it rather than *one*.

From the previous discussion it is apparent that due to its use of broad functional language, claim 3 is fully anticipated by the Nakashima patent. Nakashima not only has all of the structure of elements (a), (c) and (d)



of the claim, but he also meets the functional terms of element (b), for the Nakashima indicators *are in fact energized as his associated contact devices are operated.*"

That Nakashima did not provide *separate* means for accomplishing this purpose is beside the point in view of the functional wording of the claim.

The only possible way for claim 3 to be valid over Nakashima is to "*read into it*" the relays R and their associated armatures R'.

But the Respondent cannot now contend for such an interpretation because at the trial he committed himself to a literal and functional interpretation of the claim. *This he was compelled to do in order to find infringement by the old Fawn game.*

Pursuant to Respondent's contentions below, the Trial Court and the Circuit Court both adopted his interpretation of claim 3 and held the Fawn games to infringe said claim, in spite of the fact that instead of using relays as Gibbs does, both of the Fawn games employ *a simple overbalanced paddle* or "see-saw" switch of the type shown in the Schneider patent [R. 408] and the Blackmore patent [R. 515].

Respondent contends that the Fawn gravity-operated paddles are the equivalent of the Gibbs electrical relays because the Fawn switch remains closed, thus causing the lamps to stay energized. However, Respondent ignores the fact that Nakashima's switch *also* remains closed causing *his* lamps to stay energized.

Any interpretation of claim 3 which causes it to read on the Fawn games also causes it to read on the Nakashima game. Conversely, if claim 3 is limited to the relays R so as to avoid Nakashima, it is likewise avoided by the Fawn games.

Additionally it will be remembered that the *new* Fawn game has no win light or bell and hence does not infringe claim 3.

### Summary Re: Claim 3.

1. The phrase "means for energizing said indicators as the associated contact devices are operated" defines the only novelty of claim 3 over the Nakashima patent.
2. Said phrase is wholly functional.
3. Claim 3 is therefore invalid for failure to meet the particularity required by R. S. 4888.
4. When literally/construed as contended for by Respondent, claim 3 is anticipated by Nakashima because the indicators of Nakashima are in fact "energized as their associated contact devices are operated."
5. If claim 3 is judicially narrowed by inclusion of the relays R to describe the invention of Gibbs in *non-functional* terms it clearly is *not* infringed by either of the Fawn games.
6. Gibbs by the use of said functional language in claim 3 has been able to extend his monopoly beyond the true scope of his invention and thus prevent the use by others of otherwise unpatented game units.

**B. Claims 6-10 Are Also Invalid Under R. S. 4888 Because Like Claim 3 They Employ Functional Language to Define Their Only Novelty Over the Nakashima Patent.**

Claims 6 and 9 each describe in the first portion thereof the construction of the individual game units, and then in the latter part of the claim they recite in *functional* language the interconnection of said units to form a complete game assembly.

In claim 6 elements (a) and (b) refer solely to the construction of the individual units and in claim 9 elements (a), (b) and (c) describe this construction. In each claim, however, the description of the individual game units is in broad language that reads fairly and squarely upon the Nakashima patent.

Likewise the last element (d) of each claim, because of the functional language employed, reads on the rabbit game of Higuchi, the pig game of Wallace, the dancing game of Chester and the lamp game of Prina.

Here again we have a combination of admittedly old elements, *all of which are disclosed in the Nakashima patent, except* the means of interconnecting the individual game units. This latter element however is described in broad functional language which by its terms reads on the mentioned prior patents.

It is submitted, therefore, that claims 6 and 9 and their dependent claims 7, 8 and 10 fail to meet the requirements of R. S. 4888 because they *fail to point out the invention* with the particularity required by the statute as interpreted in *Halliburton v. Walker*.

## DISCUSSION OF CLAIM 6.

By reference to claim 6 we find that it comprises two parts. First, a description of an individual game unit, and second, the means for connecting a plurality of these units together. These parts are here set forth as follows:

### Part 1.

- (a) each of said units including a plurality of contact devices and a plurality of indicators corresponding in number and subdivided into corresponding groups,
- (b) *means for* electrically connecting the contact devices with the corresponding indicators, said indicators *adapted to be operated when and as objects are moved by the players into engagement with the contact devices.*"

Even a casual reference to the Nakashima patent shows that the above-quoted elements are in such broad language as to read directly on the Nakashima game.

Continuing with claim 6 we see that the balance thereof describes the manner in which a plurality of Nakashima game units may be connected to make a competitive game by merely providing:

### Part 2.

- (c) *means for* electrically connecting said units together and with a source of electric current and
- (d) *means whereby* when all of the indicators in any group of any one of said units have been operated to complete a winning play the indicators on all of the units except the winning unit *will be de-energized*, while the indicators at the winning unit will remain energized, for the purpose described.

Element (d) goes to the very heart of any competitive game because it describes the very necessary function of *automatically disconnecting* all non-winning units *immediately* upon a win being made by any of the units.

This necessity was long known in the art and accounts for the fact that each of the prior art competitive game patents shows apparatus and circuits for accomplishing this purpose. By way of example the Chester patent [R. 433] discusses this salient feature commencing at line 57 and terminating at line 80. Chester states (lines 77-80) that if the players are as little as  $1/200$  of a second apart "the circuit breaker 62 would operate to thus *disconnect the circuits of all of the other units* to prevent any further actuation of the same."

By a comparison of Exhibits G and H [R. 529 and R. 531] it will be seen that Chester's circuit for accomplishing this result is substantially identical with that of Gibbs. As matter of fact, no contention has been made by Gibbs for any novelty in any of his circuits.

It is thus seen that if claim 6 displays any invention at all over Nakashima it must reside in the specific circuits and relays used for interconnecting the individual game units. Furthermore, it is seen that the method used by Gibbs for this purpose is shown by Chester [R. 424], Wallace [R. 436], Higuchi [R. 460] and Prina [R. 470].

It is submitted that no invention was necessary for Gibbs to connect a plurality of the Nakashima game units in the manner taught by Chester, Wallace, Higuchi and Prina. Be that as it may, however, the Respondent cannot be heard to say that Part II of his claim which describes this interconnection of his individual units is not an essential element of the claim.



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Since Part II of claim 6 describes the only novelty over Nakashima by the functional statement "means whereby \* \* \* the indicators \* \* \* will be de-energized \* \* \*," it too, is void under R. S. 4888 and the Halliburton doctrine.

Attention is also called to element (b) of claim 6 which covers the relation between the contact devices and the indicators. This element corresponds to element (b) of claim 3 previously discussed, but in even more functional language than claim 3.

Element (b) of claim 6 *does not even specify* "means for energizing" but merely states functionally that the indicators are "*adapted to be operated*" when and as the objects are moved by the players into engagement with the contact devices. By use of the broader terminology "*adapted to be operated*" this element literally includes indicators such as the movable rabbits, pigs and the like of the prior art.

By reference now to element (a) of claim 6 we see that it does not specify a *game board* or *apertures* nor does it specify that the "objects" move over a board or in any given path or manner. Neither does claim 6 define the type of object used. Insofar as the *wording of the claim goes*, claim 6 describes the Prina game as accurately and fully as it describes the Gibbs game. The Prina patent [R. 470] shows a plurality of game units each having a plurality of aligned indicator lamps 1-9 which are successively energized when and as a shoe 20 passes over aligned contact buttons 1a-9a. Electrical means are provided to de-energize all non-winning game units when a win is made on any unit. Also a win lamp 10 is provided.



For the reasons previously stated as to the invalidity of claim 3 under R. S. 4888 it is submitted that claim 6 is even more vulnerable than claim 3 because when all is said and done, *the only invention, if any, in the Gibbs game resides in the use of the relays R and their associated armatures R' to maintain the indicators energized.* But this feature is described in the claims only in functional language.

As with claim 3, Respondent contends that claim 6 does not come under the Halliburton doctrine *because it is a combination claim, and that no one element can be said to be the dominant feature of novelty.* However, out of the four elements in claim 6, three of them are stated in functional language.

Elements (b) and (c) use the term "means for" and "adapted" while element (d) uses the term "means whereby." On their face such phrases are purely and wholly functional and cannot possibly satisfy the statute. Consequently claim 6 is clearly invalid.

If claim 6 had been written with sufficient particularity to include either the relays R in element (b) or the specific circuits and relays involved in element (d) there could be no infringement by either Fawn game.

As with claim 3, Respondent by the use of broad functional language has been enabled to prevent the use by others of apparatus within the public domain. Such unlawful extensions of the patent monopoly by the use of functional language is the exact vice condemned by this Court in the General Electric and Halliburton cases.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949.

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No. 19.

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TODD C. FAULKNER, *Petitioner*,

*vs.*

JOHN T. GIBBS, *Respondent*.

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**REPLY BRIEF FOR TODD C. FAULKNER,  
Petitioner.**

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**Introduction.**

Respondent's Brief is devoted principally to a discussion of matters *ancillary* to the specific issues before this Court, which are:

QUESTION 1. Is the doctrine of *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U.S. 1, 67 S.C. 6, 71 USPQ 175, condemning the use of indefinite and functional language at the exact point of novelty in patent claims for a combination of mechanical and acoustical elements, applicable to claims for a combination of mechanical and electrical elements where the only feature of novelty in the claims is described broadly in terms of "means",



## DISCUSSION OF CLAIM 9.

Elements (a) and (b) of claim 9 specify the subject matter of elements (a) and (b) of claim 6 plus a game board having apertures therein and further specify that the contacts be adjacent the apertures and that the indicators are energized when the objects are deposited in the apertures.

Additionally claim 9 specifies in element (c) a supplementary signal circuit with means for holding it open during play and closing it when a win has been made.

However, since the Nakashima patent discloses apertures with contacts adjacent thereto and a supplementary signal circuit operable when a win is accomplished, it completely and fully meets all of that portion of claim 9 which refers to the construction of the single units to-wit: elements a, b and c.

This leaves only element (d) of claim 9 to supply the novelty required under the statutes.

Element (d) covers all the subject matter of element (d) in 6 since it specifies *means for discontinuing* the signals and opening the circuits of all the indicators on *all other* units. However, claim 9 is slightly narrower than claim 6 in that it *additionally* specifies that the means for discontinuing are "controlled by the closing of the signal circuit of the winning unit," whereas claim 6 is not so limited.

However, element (d) of claim 9 is nevertheless anticipated by the competitive games of Chester, Higuchi,

Prina and Wallace. Furthermore, it is apparent on the face of it that the term "means for discontinuing" is equally as functional as the term "means whereby the indicators will be de-energized," used in claim 6.

We see therefore that the *only* novelty of claim 9 over the Nakashima patent is described in conveniently functional language. Claim 9 is clearly on all fours with the claims held invalid in the Halliburton case, since "means for discontinuing," used by Gibbs, is equally if not more functional than the phrase "means for tuning," held to be functional in said case.

It is therefore submitted that claim 9 like claims 3 and 6 is clearly void ~~as~~ not defining the Gibbs invention with the particularity required by R. S. 4888 and the *Halliburton* case.

Like claim 6, claim 9 is devoid of any invention as required by R. S. 4886 because it merely recites the interconnection of a plurality of Nakashima units by means disclosed in the competitive game patents of record.

Similarly if in place of the functional language used in claim 9 to describe the individual units the relays R had been included in the claim, or if the functional language describing the means for interconnecting and operating the plurality of units had been sufficiently definite under the statutes, there would be no infringement by either Fawn game.

However, as will hereinafter be discussed, the new Fawn game does not infringe claim 9 even with its broad functional language.

or is said decision to be ignored as was done by the Court of Appeals in this case?

QUESTION 2. Where a court holds an accused apparatus not to infringe certain patent claims because said apparatus does not include an essential element of said claims, is it not contrary to fundamental law and logic for the court in the same decision to hold other claims of said patent which specify the same essential element, infringed by the said accused apparatus?

Nowhere in his brief does Respondent directly meet either of said questions.

Points I and II of Respondent's argument (see page 13 of his Brief) are directed to a discussion of F.R.C.P. 52(a) and its application to patent cases. Respondent states that invention and infringement are questions of fact; that concurrent findings below should not be disturbed unless *clearly* erroneous, and that the findings of the court below in this case are supported by the evidence.

Petitioner believes that this case comes within the *exception* to the rule, i.e., that the findings below are *clearly erroneous*.

Respondent's Point III asserts that the Gibbs' claims define patentable combinations and that the courts below were not in error in holding them valid. The *Halliburton v. Walker* decision which is directly involved in this appeal is nowhere mentioned in this discussion.

The *Halliburton* case is, however, discussed in Respondent's Point IV, his contention being that while its *result* may be correct, its *reasoning* is erroneous. Respondent in this portion of his Brief re-argues the *Halliburton* case at length and contends as follows:

1. That the decision in the *Halliburton* case *could* have been predicated upon other grounds.
2. That the court's reasoning was erroneous.

3. That said reasoning was erroneous because the Court was led into error by counsel for Halliburton.
4. That as a consequence of counsel's erroneous statements, this court read and applied *the wrong part* of the statute to the case.
5. That if this court (by a majority of 8 to 1) had read the statute *correctly*, it would not have made said mistake.

Since Respondent has not seen fit to directly discuss either of the legal questions herein, and has departed from the order of presentation used in Petitioner's Brief, we here re-state the points of our argument, as follows:

PETITIONERS' POINT I. The Claims in suit are invalid under R.S. 4888 and the doctrine of *Halliburton v. Walker*, because they do not particularly point out or distinctly claim the invention, but on the contrary use the functional statements, "means for energizing", "means whereby", and "means for discontinuing", at the exact point of novelty.

A. The definition of the only element of novelty in Claim 3 by the functional statement, "*means for energizing said indicators as the associated contact devices are operated*", renders Claim 3 invalid under R.S. 4888, in view of the Nakashima patent.

B. Claims 6-10 are also invalid under R.S. 4888 *because like Claim 3 they employ functional language* to define their only novelty over the Nakashima patent.

PETITIONERS' POINT II. Since Claims 6, 7 and 8 of the Gibbs' patent were held not infringed by the New Fawn Game because it omitted an essential element of said claims, Claims 9 and 10 which include the same essential element are not, as a matter of law, infringed by the New Fawn Game.

## POINT II.

Since Claims 6, 7 and 8 of the Gibbs Patent Were Held Not Infringed by the New Fawn Game Because It Omitted an Essential Element of Said Claims, Claims 9 and 10 Which Include the Same Essential Element Are Not, as a Matter of Law, Infringed by the New Fawn Game.

While a ruling favorable to the Petitioner under Point I will result in a reversal of the judgment below it is nevertheless believed that it is in the public interest for this Court to correct the error committed by the lower courts which gave rise to our Point II.

The ruling of the courts below that relatively narrow claims 9 and 10 were infringed by the new Fawn game in spite of the fact that broad claim 6 and its dependent claims 7 and 8 were held *not to infringe*, either raises a distinct question of law that should be settled by this Court, or exhibits such a misconstruction of existing law by the lower courts as to warrant this Court in exercising its supervisory power to instruct the lower courts in the law. Otherwise the same error may be repeated in the future to the prejudice of other innocent litigants.

It is for this reason that we urge this Court to fully consider our Point II and either restate the law involved or instruct the lower court as to that law.

As set forth in our Petition for Writ of Certiorari and as admitted by Respondent, the Gibbs game is a competitive group game. It is competitive because as Respondent admitted, and as the Trial Court found, the play continues until one player makes a winning combination on his individual game unit. As soon as a winning combination is made, *all of the other units are immediately*



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**Respondent's Points I and II Are Ancillary to the  
Issues of this Case.**

Pages 14 to 34, inclusive of Respondent's Brief develop the theme that the findings below should not be disturbed because they are *not clearly* erroneous.

As stated, we firmly believe that the findings herein come within the *exception* to the rule, in that they are "clearly erroneous". Specifically so as to petitioner's Point II.

So that the court would be fully advised of our position on ancillary as well as major issues, we pointed out in our opening Brief the more salient errors below, such for example as:

1. That the claims in suit if *literally* construed are invalid over the prior art; and if *narrowly* construed are *not* infringed by either Fawn game.
2. That all of the claims in suit are invalid for lack of novelty and invention.
3. That the *new* Fawn game does not in *any event* infringe any of the claims in suit.

This case, however, is before this court on a pure *question of law*. As to this question of law, the concurrent findings below are neither material nor relevant.

Respondent's argument under his Points I and II is neither material nor relevant to the controlling issues of this case, but pertains solely to the *ancillary* issues, which this court has, of course, the right to consider, once having taken jurisdiction.

*de-energized* to prevent further play which might result in allegedly tie games and arguments. This feature of the Gibbs game is set forth in element (d) of both claims 6 and 9.

In the new Fawn game *there is no competition* between the players since a time clock operates the game for a specified time and *no units are shut down until a switch is operated by the time clock* at the expiration of the specified time.

This *essential difference* between the new Fawn game and Respondent's game was the basis for the Trial Court ruling that claims 6, 7 and 8 were not infringed. Illustrative of this fact is the statement by the Trial Court at R. 262 as follows:

"The Court (to Mr. Huebner): \* \* \* *That is the fundamental distinction*, that while there is a possibility that several persons may win; and also the possibility that no one might win in his (Petitioner's) game while your (Gibbs) game goes on until somebody wins. *So here are two differences in results.* His game stops automatically after a minute and a half. Your game goes on until somebody wins."

At R. 266 the Court continuing its discussion with counsel for Respondent stated further:

"It seems to me that the latter part of that claim (6) the wording would not be read on the altered game, as you call it, *the new game, because there is no de-energization*, de-energization does not occur, because the game goes on."

**Respondent Fails to Negative the Fact that the Only Features of Novelty Over the Prior Art Are Claimed Solely in Functional Language.**

In attempting to show that the Gibbs claims are not bad for functionality, the Respondent states on page 51 of his Brief, as follows:

"The Gibbs apparatus differs from Nakashima fundamentally."

Respondent, however, is here comparing with Nakashima the Gibbs game as shown in the specification and drawings of the patent in suit, rather than as defined in the claims in suit.

We concede that Gibbs may have made an invention. We concede also that Claims 1, 2, 4 and 5, *not here in suit*, may adequately describe that invention because they, contrary to the claims in suit, *include as elements thereof* the momentary operation of the contact devices, the relays, the armatures for the relays, etc., all essential to the Gibbs game.\*

Respondent stresses in his Brief that *all* of the elements of his game are old. To prove this, he breaks claim 3 down (pp. 49 and 50) into seven elements. These elements are as follows (see p. 49):

1. "A board having"
2. "A plurality of contact devices (switches) thereon adapted to be engaged by an object moved over the board by a player."

\* Respondent relies on Gibbs v. T. Z. R., etc.; but said case is totally irrelevant to this case because, as stated in Respondent's Brief, the T. Z. R. game was a *complete copy* of the Gibbs game. This is evident from the fact that *even the narrow* claims of Gibbs, *not here in suit*, were found to be infringed, which could not have been the case otherwise. Petitioner's Fawn games are *not* copies of the Gibbs game, and hence the T. Z. R. decision is not relevant here.

Later at R. 287 in its opinion at the close of the argument the Court stated:

“\* \* \* the (new) Fawn game is played for a definite time,—a minute and a half, making it possible for two persons to win during the course of the game, one after the other. *The Gibbs game is played strictly on a competitive basis* and the moment one winner has won, the play of the others stops automatically. \* \* \*

The result is that *under the Fawn game there can be any number of winners, and it is possible that no one should win*, during that time, while under the Gibbs game only one player may win, and there is always a winner because the game does not stop until one person has won. In the other (new Fawn) game, as I have already stated, the time clock automatically stops all games \* \* \*

“*I do not think that claim 6 is infringed, and I think if you read them the way counsel desires me to read them they would fall under the interdict of the recent decision of the Supreme Court in Halliburton vs. Walker.*”

It is abundantly clear that the trial court found claims 6, 7 and 8 *not* to be infringed by the new Fawn game because these claims are limited to a *competitive game* where when one player wins, *the other game units are automatically de-energized, whereas the new Fawn game is not a competitive game because the other game units are not de-energized when a win is made on one unit.*

However, after holding claims 6, 7 and 8 *not* infringed by the new Fawn game, the Trial Court then erroneously held that claims 9 and 10 *were* infringed.

Respondent discusses these elements together at the top of page 23 of his Brief, and asserts that *because* of these elements, Claim 3 "in its inception *distinguishes and departs* from the principal construction and function of the Nakashima prior art patent."

But the only support for this statement is found in the preceding paragraph appearing at the bottom of page 22 of Respondent's Brief, where he states that "in the Gibbs game a *single ball* is used, which, having entered a hole and having *actuated* an electric switch, *returns* to the player for a replay."

Referring, however, to the wording of Claim 3, we see that:

- A. It does *not* specify *any holes* in the board.
- B. It does *not* specify a *ball* (it merely refers to an "object" not included as an element of the combination).
- C. It is *not* limited to a *single* ball or "object".
- D. It does *not* specify that the ball or "object" *enters* a hole.
- E. It does *not* specify that the "object" *actuates* a contact device.
- F. It does *not* specify that the ball or "object" *returns* to the player.
- G. It does *not* specify *where* the contact switches are located with respect to the board except that they shall be "thereon".

*Not one* of the features attributed by Respondent to elements 1 and 2 of his Claim 3 is actually recited in said claim.

Looking at what the claim *does* call for, and at the Nakashima patent, we see that Nakashima clearly shows:

**Element 1.** "A board having"



A simple comparison of element (d) of claims 6 and 9 shows that they *each* are directed to a *competitive* game in which a win on one unit results in de-energizing, i. e., disconnecting all non-winning game units. In claim 6 this feature is set forth as follows:

- (d) *means whereby* when all of the indicators in any group of any of said units have been operated to complete a winning play, *the indicators on all of the units except the winning unit will be de-energized*, while the indicators at the winning unit will remain energized for the purpose described.

In claim 9 this feature is described as

- (d) *means* controlled by the closing of the signal circuit of the winning unit *for discontinuing the signals and opening the circuits of the indicators on all other units.*

Since the above language quoted from claim 6 describes a competitive game *as held by the Trial Court*, the companion language quoted above from claim 9 *must also describe a competitive game.*

The phrase in element (d) of claim 9 "controlled by the closing of the signal circuit of the winning unit" is a further limitation tending to *narrow* claim 9 over the disclosure of claim 6. *It does not broaden claim 9 in the slightest.*

Claim 6 specifies that the indicators on non-winning units shall be de-energized while the indicators on the winning unit remain energized. In claim 9 this same feature is expressed in different words by stating that when a win has been made the circuits on *all* of the *other* units are opened. The use of the word "other" in claim

**Element 2.** "a plurality of contact devices thereon (switches under the holes) adapted to be engaged by an object (ball) moved over the board by a player."

How then can Claim 3 "at its inception *distinguish and depart*" from Nakashima? The answer of course is, that it *does not*. On the contrary, Nakashima meets elements 1 and 2 fully and completely.

Referring now to the other elements in Respondent's outline (page 50), we note the following:

**Element 3.** "a plurality of indicators."

Nothing is said here as to the *type* of indicators to be used or *where* they are to be located. Insofar as the claim is concerned, the indicators may be lights, pigs, rabbits, dancers, bells, or what-nots, as desired. These indicators may, *insofar as the claims is concerned*, be located on, over, under or behind the game board, or might be hung from the ceiling, or located in another room. If the indicators meant to be included in this element are electric lamps, as disclosed by Respondent, *then they are shown in Nakashima*.

**Element 4.** "*means for electrically connecting said indicators with a source of electric current and with said contact devices.*"

These are of course the wires which connect the switches of element 2 with the indicator lamps of element 3, as found in *both* Gibbs and Nakashima.

**Element 5.** "*means for energizing said indicators as the associated contact devices (switches) are operated.*"

In the Gibbs game, said "means" are the twenty-five relays R and their twenty-five associated armatures R', which are in turn associated with the contact devices (switches) disposed in the twenty-five holes in the game board. *No alternative* means for accomplishing energization of the indicators are shown or even suggested in the

9 obviously states the same thought as stated by the word "except" in claim 6.

In claim 6 the de-energization of the competing units is stated broadly, *whereas in claim 9 it is limited to a system controlled by the signal circuit.* It is apparent that whatever synonym is used for the word "controlled," it cannot affect the plain meaning of the claim.

Since claims 6, 7 and 8 were held *not* to be infringed by the new Fawn game because of the omission of the above-quoted element, *it follows as a matter of law* that claim 9 likewise cannot be infringed since it describes the *same element in almost identical language.*

It is submitted therefore that the decision of the lower courts finding claims 9 and 10 infringed by the new Fawn game should be expressly reversed irrespective of the ruling on Point I.

### Conclusion.

1. The claims in suit are invalid under R. S. 4888 because they use functional language at the exact point of novelty as condemned in the case of *Halliburton v. Walker.*

2. If the claims in suit had been drawn in compliance with the statute, instead of in functional language which unduly extended their scope, there could have been no infringement by Petitioner.

3. Respondent by the use of functional claims has been enabled to extend his monopoly beyond the true scope of his invention, if any, and thus has prevented the use by others of otherwise unpatented machines.

4. In spite of the functional breadth of the claims in suit they are not infringed by the new Fawn game.

Gibbs specification. The Gibbs contact devices (switches) are only *momentarily closed*, and their sole function is to energize the relays R. The relays R move the armatures R' to circuit-closing position to energize the indicators. The indicators are maintained energized by the armatures R' *after* the contact switches have *reopened*.

In Petitioner's game, as in Nakashima's, the indicator lamps are energized and kept energized solely by reason of, and *only so long as*, their contact switches are kept closed. Nakashima uses the weight of the ball to keep the switch closed, while Petitioner substitutes therefor, the weight of his over-balanced paddle. Neither employs a counterpart of Respondent's relays R and their armatures R'.

**Element 6.** "an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized."

No specific details of this circuit are given. No qualification of the groups is stated. When a win has been made in the Gibbs game by having five lights energized, a bell rings to indicate a win. In the Nakashima game, when three lights have been energized, a bell rings to indicate a win.

**Element 7.** "and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

The supplementary means in both Gibbs and Nakashima is the bell above-mentioned. (Gibbs also has a win *light* on each unit.)

Thus we see that Nakashima literally and completely meets both the structural and functional limitations of elements 1, 2, 3, 4, 6 and 7, of Claim 3 as above set forth. Furthermore, Nakashima completely meets the *function* of element 5, because he "energizes said indicators as the associated contact devices are operated."

5. By holding claims 9 and 10 infringed by the new Fawn game after holding claims 6, 7 and 8 not to be infringed, the lower Court committed manifest error.

6. The claims in suit also are invalid for lack of novelty and invention over the art of record. If sufficiently narrowed by judicial construction to be valid, they are not infringed by either of Petitioner's games.

The decision of the Court of Appeals for the Ninth Circuit should be reversed.

Respectfully submitted,

ROBERT W. FULWIDER,

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*Of Counsel.*



Element 5 uses conveniently functional language to define the relays R and their associated armatures R' essential for maintaining the Gibbs indicators energized *after* his contact devices have *momentarily* closed ~~and then re-~~ *opened*. This is the sole novelty over Nakashima.

✓ No counterpart of Gibbs' relays R and armatures R' is needed or employed by Nakashima, nor by Petitioner, since the latter, like Nakashima, maintains his indicators energized *by keeping his contact switches closed*.

Respondent characterizes as the crux of his invention what he terms the "qualification and mutual relationship" of elements 2 and 3. The clause referred to states: "said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups." Respondent does *not*, however, say that this relationship is novel. Indeed it is not (see Hayashi R 383).

Respondent says on page 50 that this "qualification and mutual relationship" "sets his game completely apart from the Nakashima prior patent", but what Respondent does *not* say is that by the same token it *also* sets his game completely apart from Petitioner's games.

The clause of Claim 3 constituting the alleged qualification and mutual relationship does *not* state what the groups are comprised of nor to what they correspond. Nakashima and Petitioner have (a) groups of contacts, (b) groups of indicators, and (c) groups of circuits. Neither Petitioner nor Nakashima provide an arrangement of contact apertures corresponding to the arrangement of indicators. Petitioner's contact apertures are in two long horizontal rows unrelated to the arrangement of the indicators. Likewise Nakashima's "star" contact apertures are arranged in a manner unrelated to the arrangement of the indicators.

Respondent is therefore in the position of arguing to this court that the precise point of novelty or crux of his invention resides in the "Qualification and Mutual Relationship

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949.

\_\_\_\_\_  
No. 19.  
\_\_\_\_\_

TODD C. FAULKNER, *Petitioner,*

v.

JOHN T. GIBBS, *Respondent.*

\_\_\_\_\_  
**REPLY BRIEF FOR TODD C. FAULKNER,**  
**Petitioner.**  
\_\_\_\_\_

ROBERT W. FULWIDER,  
*Attorney for Petitioner.*

JAMES P. BURNS,  
*Of Counsel.*

of elements 2 and 3, a feature not present in Petitioner's game.

Regarding the validity of Claims 6-10, Respondent merely says (page 51) that "by analogy (to Claim 3) the other claims in suit also define valid combinations,". *Nothing more is said!*

Respondent has refused to face the fact that Claims 6-10 are even *more functional* than Claim 3, and in particular that said claims are functional at their exact point of novelty. As discussed in detail in our Opening Brief, the only feature of novelty in Claims 6 to 10 is the function resulting from the interconnection of the individual game units. *This function and various ways of attaining it are fully disclosed by the prior art patents on competitive games.*

Furthermore, we see that Claim 6 in describing the individual game units, neglects to state that they include a game board, *or* holes, *or* balls to pass through the holes, *or* any particular kind of indicator, *or* that the indicators correspond in arrangement with the contact devices, *or* any particular type of contact device, *or* any location for the contact device, *or* "means" for energizing the indicators.

Claim 6 as to the individual game units reads squarely on Nakashima.

The only element of Claim 6 not shown by Nakashima, is the "means" for connecting the game units together whereby when a win is accomplished on one unit the other units are disconnected. No details or structure are given as to how this function is to be accomplished. *The function is old*, only the detailed structure, not defined, could possibly lend patentability to the Gibbs game.

Claim 9 is almost identical with Claim 6 except that unlike Claim 6 it specifies a game board with holes therein. *It likewise depends upon functional statements* at its exact point of novelty.

As to the means for interconnecting the units, Respondent asserts that Claim 9 is broader than Claim 6. However

it actually is slightly narrower than Claim 6 since it attempts to tie the means for disconnecting the non-winning units to the signal circuit of the winning unit. But again no *structure* is described and from a casual inspection of the competitive game patents of the prior art (*none of which were cited by the Patent Office during the prosecution of the Gibbs patent*), it is seen that numerous circuits and structures were known in the art for accomplishing this function recited in both Claims 6 and 9.

Thus we see that Claims 6-10 are clearly defective, since the only feature of novelty therein over the prior art is described in functional terms as "means for de-energizing" and "means for discontinuing" the circuits on the non-winning units.

As stated by Mr. Justice Reed in the case of *Universal Oil Products Co. v. Globe Oil & Refining Co.*, 322 U.S. 471, 61 U.S.P.Q. 382,

"But the quid pro quo is disclosure of a process or device in sufficient detail to enable one skilled in the art to practice the invention once the period of the monopoly has expired; and *the same precision of disclosure* is likewise essential to warn industry concerned of the *precise scope* of the monopoly asserted. *Bene v. Jeante* 129 U.S. 683, 685; *General Electric v. Wabash Corp.* 304 U.S. 364.

" \* \* \* The claim is the measure of the grant. *Smith v. Snow* 294 U.S. 1, 11. *The claim is required to be specific* for the very purpose of *protecting the public* against the extension of the scope of the patent. *White v. Dunbar* 119 U.S. 47, 52; *Minerals Separation v. Boot, etc. Mining Co.* 250 U.S. 336, 347; *Knick v. Bowes Sealfast Corp.* 25 F. (2d) 442." (Emphasis added)

An outstanding instance of findings herein so clearly erroneous as to warrant this court in reviewing the same is Finding XII (R 37, 38) which is in *direct conflict* with the trial court's *holding* in this case.

The trial court held that Petitioner's new Fawn game did *not* infringe Claims 6, 7 and 8 because it did *not* have means operative upon a win being made on one game unit for disconnecting the non-winning units as called for by Claim 6. However, the trial court then through palpable error (R 289) found (see top of R 38) that the new Fawn game infringed claims 9 and 10 *which contain the same element*, to wit; means operative upon a win being made on one game unit for disconnecting the non-winning units.

Such findings illustrate the character of error committed by the courts below that support Petitioner's contention that the findings herein come within the *exception to the rule* and should be set aside by this court as *clearly erroneous*.

### **Respondent Ignores His Claims in His Treatment of the Other Prior Art Patents.**

In discussing the prior art patents other than Nakashima, Respondent calls attention to various features of the game illustrated in the Gibbs patent *drawings*. What Respondent does *not* say, however, is that almost without exception *none* of these features is included in any of the Gibbs *claims here in suit*.

For example, in discussing the Hayashi patent at page 24 of his Brief, Respondent calls attention to the fact that Hayashi's playing board is inclined downwardly ~~away~~ from the player instead of upwardly as in Gibbs. However, *none of the Gibbs claims even mentions* inclination of the game board. As a matter of fact, Claims 6, 7 and 8 don't even call for a board.

Respondent further states that Hayashi provides *three* "objects" in the form of peanuts to be rolled across the board. What Respondent does *not* state, however, is that *because of the broad functional wording of the Gibbs claims*, they cover using peanuts as well as balls, ~~and~~ nothing at all is said in the claims with respect to the path which has to be followed by said "objects". Respondent complains



that the weighted peanuts of Hayashi remain in the pockets in order to keep the indicators energized. But there is nothing in Gibbs' *claims* which states that his "objects" *must pass through the board*.

The same is true as to the Esmarian patent. Respondent calls attention to the fact that Esmarian uses a plurality of balls which remain in the pockets. But there is *nothing* in any of the Gibbs *claims* which limits them to a *single* ball or to a board having pockets therein through which the balls may pass. The "object" *is not even an element of the Gibbs game*, per se, *nor is it recited as a positive element in any of the claims*.

With respect to the Mader patent, Respondent neglects to say that it shows an annunciator panel *practically identical* with the Gibbs annunciator *having vertical and horizontal rows* of lights which are energized when their corresponding indicators are engaged by a ball rolled across the board.

In discussing the prior art patents to Chester, Wallace, Higuchi Prina and Irsch, the Respondent attempts to minimize the disclosures of these patents by saying that they do not show game boards. However, all of these competitive game patents show the Gibbs system of interconnecting a plurality of game units in such a manner that a win on one unit disconnects all of the others. These patents are of particular interest because the Patent Office *did not cite any competitive game patents whatsoever* against the Gibbs application. If even one such patent had been found by the Examiner, he obviously would never have allowed claims 6-10 in their present broad *functional* form.

### **The Cases Cited by Respondent When Correctly Construed Support Petitioner's Position Herein.**

Under the sub-title "Fundamental Supreme Court Doctrine", pages 40-45 of his Brief, Respondent quotes from a few Supreme Court cases, and at page 47 he makes an out-

line of the claims adjudicated in said cases. Turning first to the case of *Bates v. Coe*, 98 U. S. 31, quoted by Respondent, we find that Mr. Justice Clifford stated that a claim to a combination of old elements was proper:

*"if the elements or devices of which it is composed are all named and their mode of operation given, and the new and useful result to be accomplished pointed out, so that those skilled in the art and the public may know the extent and nature of the claim."*  
(Emphasis added.)

The foregoing definition of combination claims is not at variance with the Halliburton decision in the slightest. The latter reaffirms the old doctrine that the elements of *any* combination claim *must be sufficiently named, described and pointed out* so that the public will know the scope of the monopoly claimed. In the words of *Bates v. Coe*, this particularity is necessary so that "other inventors may know what part of the field of invention is unoccupied. *Gill v. Wells*, 22 Wall. 27, 89 U. S. 711."

On pages 41 and 42 of his Brief Respondent quotes in full the claims in suit in *Morley Sewing Machine Company v. Lancaster* 129 U. S. 263. Each of these claims, in addition to including "mechanisms" and "appliances", closes with the phrase "*substantially as set forth*" or "*as specified*" or "*as set forth*". These terminal clauses of course *limit* the claims which are otherwise in relatively broad language to *machines as described in the specification and drawings* of the patent in suit.

However, in summarizing Claim 1 of the *Morley Sewing Machine* case, Respondent at page 47 of his Brief, lists what he calls the "means elements" in Morely's Claim 1 as follows:

1. "button feeding mechanism"
2. "appliances for passing a thread, etc."
3. "feeding mechanism, etc."

Respondent completely neglects to also quote the restrictive terminal clause in Claim 1 of Morely which states "*substantially as set forth*." This clause completely nullifies Respondent's contention that the Morely case is authority for "means" claims of the type appearing in the Gibbs patent.

Respondent gives similar treatment to the *Paper Bag* case with respect to which, on page 47 of his Brief, he states that Claim 1 contains as elements:

1. "means for operating said fingers at definite times, etc."
2. "operating means for the forming plate adapted to cause, etc."
3. "means to move the bag tube, etc."

Considering only this much of said claim, it is made to appear that this Court has broadly sanctioned functional claims.

However, if we read *all* of said claim, instead of just Respondent's outline thereof, we immediately see that it also includes a

"*rotating cylinder provided with one or more pairs of side-folding fingers adapted to be moved toward or from each other, a forming plate also provided with side-forming fingers adapted to be moved toward or from each other, etc.*"

It is further specified in said claim that the operating means for the forming plate is

"*adapted to cause the said plate to oscillate about its rear edge upon the surface of the cylinder during the rotary movement of said cylinder, the whole operating for the purpose of opening and forming the bottom of the bag tube.*"

Attention is particularly called to the fact that Mr. Justice McKenna in upholding the patent in the *Paper Bag* case stated that the pith of the invention was:

“the combination of a rotating cylinder with means for operating the forming plate in connection therewith, *limited however*, to means which cause the plate to oscillate about its rear edge on the surface thereof”;

and that a

“folding plate and cylinder had never been combined before”;

and hence that the court felt the lower courts were correct in considering invention to be involved and the claim not to be too broadly defined.

It is quite apparent therefore that neither the *Mercly* case nor the *Paper Bag* case is authority for sustaining the *functional claims* here in suit.

The same is true in the case of *Exhibit Supply Co. v. Ace Patents Corp.*, 315 U. S. 126, cited and quoted by Respondent on pages 47 and 48 of his Brief. A mere casual inspection of the Exhibit Supply Co. claim shows that the word “means” was modified and limited structurally as well as functionally, whereas in the Gibbs claims no such modification or limitation is present.

The Gibbs claims instead of being comparable to the *Exhibit v. Ace* claims, are strictly on all fours with the *Walker* claims in the *Halliburton* case. Just as the *Walker* claims were invalid for functional statements at their exact point of novelty, so are the Gibbs claims invalid for the same reason.

Such functionality in claims has been consistently condemned by this court. In the case of *United Carbon Company v. Binney & Smith Co.*, 317 U. S. 228, 55 U. S. P. Q.

381, this court, speaking through Mr. Justice Jackson, said with respect to R. S. 4888:

"So read, the claims are but inaccurate suggestions of the *functions* of the product and fall afoul of the rule that a patentee *may not broaden* his claims by describing the product in terms of *function*.

*Holland Furniture Co. v. Perkins Glue Co.*, 277 U. S. 245; *General Electric Co. v. Wabash Corp.*, 37 USPQ 466; 304 U. S. 364." (Emphasis added.)

### **Respondent's Criticism of the Halliburton Decision.**

Under Point IV of his Brief, Respondent first postulates a theoretical question and then uses this question as a springboard for arguing that the reasoning of this court in the *Halliburton v. Walker* case was erroneous.

Respondent states that if the Halliburton decision can be construed to bar what he calls "means" claims, it should be explained, clarified or distinguished. Respondent states that he does not believe this Court *meant* to rule out *all* combination claims in which the word "means" is used. He then asserts that Petitioner has, however, cited the Halliburton case to this effect. This assertion is erroneous.

Petitioner has brought the instant case to this Court because the courts below refused to recognize:

- (1) That the Halliburton decision was a restatement and particularization of well-settled law relative to functional claims, and
- (2) That the rule of the Halliburton case applied equally well to claims for a combination of mechanical and *electrical* elements as to a combination of mechanical and *acoustical* elements.

As a make-weight to his contention that the Halliburton decision is wrong Respondent points to the fact that Mr. Mattingly, one of the counsel of record herein, was the attorney for Walker in the Halliburton case and that in June,



1947, he filed an affidavit in support of an unrelated petition for certiorari, wherein he stated that in his opinion the court should clarify the Halliburton holding. Mr. Mattingly is accused of bad faith in now appearing as associate counsel in this case some two years after filing the above-mentioned affidavit.

Unfortunately, Mr. Mattingly is unable to reply, due to his untimely death on Thursday, September 29 of this year, the day before undersigned counsel first heard of said affidavit.

In view of the fact that opposing counsel has adverted repeatedly in his Briefs before this court to Mr. Mattingly's connection with this case it is thought that perhaps a short statement concerning Mr. Mattingly's activities herein will not be amiss at this point.

As mentioned, Mr. Mattingly argued the case for Walker against Halliburton, which case was first affirmed by a divided court, but upon rehearing was decided adversely to Walker by a majority of 8 to 1. Mr. Mattingly understandably felt that he should have won the Walker case. But as a good counselor he recognized the Halliburton v. Walker decision as the law of the land as applied to the circumstances of that case.

As mentioned by opposing counsel, Mr. Mattingly was the attorney for the Defendant Hicks in the case of Gibbs v. Hicks filed in the Southern District of California shortly prior to the instant case. Contrary to Mr. Mattingly's desires the Hicks case was settled by giving a Consent Judgment to the Plaintiff Gibbs. Prior to the entry of said Consent Judgment the Defendant Faulkner requested Mr. Mattingly to handle this case for him but Mr. Mattingly fearing a conflict of interest because Hicks and Faulkner were then competitors referred Mr. Faulkner to undersigned counsel. Upon the entry of the Consent Judgment in the Hicks case, the undersigned counsel requested Mr. Mattingly, who was very familiar with the Gibbs patent, to act

as expert witness in this, the Faulkner case. This Mr. Mattingly consented to do and did.

During the pendency of the appeal of this case in the Ninth Circuit Court of Appeals, undersigned counsel and Mr. Mattingly on July 1, 1948 formed a partnership for the practice of law under the firm name of Fulwider & Mattingly. Subsequent thereto this case was decided adversely to appellant-defendant by the Ninth Circuit Court of Appeals and a petition was presented to this court for a Writ of Certiorari. Inasmuch as undersigned counsel was not then admitted to the Bar of this Court, said petition was signed by Mr. Mattingly with the undersigned merely appearing as counsel. At that time the above-mentioned partnership of Fulwider & Mattingly was still in existence, *all as was well known to opposing counsel.*

The undersigned was admitted to practice before this Court on April 25, 1949 and subsequently thereto prepared Petitioner's Opening Brief herein.

Returning to the Halliburton decision itself, and Respondent's discussion thereof, it is thought that little more need be said.

That the Halliburton case might also have been decided on other grounds does not seem to Petitioner to be an adequate reason for this court's now reversing a decision that was rendered by a majority of 8 to 1. Whether or not other grounds existed for the Halliburton decision would seem to be beside the point.

The gist of Respondent's argument seems to be that this court did not correctly read the statute and that as a consequence thereof, or because of the inadvertence of counsel for Halliburton, the court quoted the wrong part of the statute in its decision.

However, Petitioner cannot see any clear distinction between such words as "full", "clear", "concise", "exact", "distinct", "definite", "certain" and the like. The statute says that the inventor shall *particularly point out and distinctly claim* his invention. In the Halliburton case it

is said that "this statutory requirement of *distinctness* and *certainty* in claims is important." Merely because this court in the same decision also said that the claims should be a *clear, concise and exact description* of the invention, would not seem to show any grievous error or misconception by the court of the meaning of the statute or the rules prohibiting functionality in claims.

We are unable to accept Respondent's premise that in the Halliburton case this court was misled, or misconstrued or ignored the language of the statute requiring the inventor to "*particularly point out and distinctly claim the invention*".

The Halliburton case when read as a whole, as it should be, is quite clear. The decision condemns the use of functional language in any claim *where the sole novelty or essence of the invention is described in functional language*. This is not a new rule. It is an old rule, merely restated in the Halliburton decision in terms which were peculiarly applicable to the facts of that case. The circumstance that those terms are *also* peculiarly applicable to the facts of *this* case, does not warrant counsel for Respondent in seeking to overturn the Halliburton decision.

### Conclusion.

It is believed that the Briefs herein demonstrate the following:

- (1) That Respondent has avoided and declined to meet the real issues of this case.
- (2) That Respondent, recognizing that the claims in suit fall squarely within the condemnation of the Halliburton case, has dwelt principally upon ancillary issues.
- (3) That Respondent has made no answer to Petitioner's Point I, to wit, that the claims in suit are invalid because they define the only alleged novelty therein in functional terms.

- (4) That Respondent's attack on the Halliburton decision is predicated upon an erroneous hypothesis and is entirely outside the issues of this case.
- (5) That Gibbs' claim 3 exhibits no novelty whatsoever over the Nakashima patent unless "means for energizing" is limited to the relays R and associated armatures R' specifically shown in the Gibbs patent and included in claims 1, 2, 4 and 5 not here in suit.
- (6) That claims 6 to 10 display no novelty over the Nakashima patent other than that set forth in the functional statements describing the results to be accomplished by their interconnection.
- (7) That Respondent's statements in his Brief that the trial court resolved all conflicts of evidence in Respondent's favor are erroneous on their face in view of the fact that the trial court found claims 6, 7 and 8 not to be infringed by the new Fawn game.
- (8) That claim 9 is more restricted than claim 6, and in any event includes the same element present in claim 6 which caused the trial court to find claim 6 not infringed. Consequently, claim 9 and its dependent claim 10 cannot, as a matter of law be infringed by the new Fawn game.
- (9) That the concurrent Findings below are so clearly erroneous that they should be reversed and the Gibbs claims in suit held invalid for lack of novelty and invention.
- (10) That the claims in suit are clearly invalid for failure to particularly point out the invention as required by R. S. 4888, since they use conveniently functional language at the exact point of novelty.

(11) That the decision of the courts below should be reversed.

Respectfully submitted,

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JAMES P. BURNS,  
*Of Counsel.*



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IN THE

**Supreme Court of the United States**

October Term, 1948-1949

No. ~~100~~ 19

**TODD C. FAULKNER,**

*Petitioner,*

*vs.*

**JOHN T. GIBBS,**

*Respondent.*

**RESPONDENT'S BRIEF OPPOSING PETITION  
FOR WRIT OF CERTIORARI**

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IN THE  
**Supreme Court of the United States**

October Term, 1948.

No. 537

TODD C. FAULKNER,

*Petitioner,*

*v.s.*

JOHN T. GIBBS,

*Respondent.*

**RESPONDENT'S BRIEF OPPOSING PETITION  
FOR WRIT OF CERTIORARI.**

**Statement of the Case.**

Respondent wishes to correct and amplify Petitioner's "Summary Statement of the Matter Involved" in some respects considered pertinent. No correction or comment will be made as to matters which do not bear on the merits of the Petition.

Petitioner's brief reference on page 3 of his Petition to the nature of the Gibbs patent game is inadequate, and enables Petitioner to more readily attribute the Gibbs game to prior art.

The Gibbs game comprises a game board with holes arranged in a pattern similar to the pattern of electric

lights on an annunciator panel, a single ball for the player to throw or roll over the board and which, when dropping through any hole, will actuate an electric switch, falling past it and returning to the player for a successive roll, electrical circuits whereby an electric light is energized corresponding to the switch which is closed, and means to maintain the circuit closed. This can be a relay or an overbalanced switch or a switch of a releasable spring clamping type. The circuits are grouped so that when a line of lights is energized a win circuit is established, a signal results, and the winner or winners of a plurality of these game units, which are electrically interconnected, remain lighted after the non-winners are de-energized.

Petitioner represents in his Petition, page 2, that of the two Fawn games held to infringe, while the "original" Fawn game was competitive, the modified or "altered" Fawn game was non-competitive. In the latter the Petitioner is in error. Both infringing Fawn games are competitive games.

In both Fawn games the physical elements of playing board, annunciator light panel, playing balls, and arrangement are identical. The electrical circuits remain the same with these exceptions which are immaterial: in "altering" the game certain light bulbs were unscrewed from their sockets, one wire connection was shifted, and an electric time switch was added as an accessory. The method of play was the same as before: each player sat before his unit, playing board and rolled a ball into the holes, endeavoring by repeated rolling of the ball to light



up five lights in a row and thereby become a winner. All the time switch ~~del~~ (present in the altered game) was to limit the period in which a game could be played. That was purely an addition to, not an omission from, the primary claimed features of the Gibbs patent.

The Gibbs patent in suit is for a game apparatus combination resulting in a new game which achieved popularity. The patent utilizes old elements such as playing boards with holes therein, annunciator panels with electric lights, electrical switches, relays and circuits in a manner found by the Patent Office and by the Courts below to involve a new and patentable combination. There is no single element which may be described as the "exact point of novelty."

The Gibbs patent claims in suit were not narrowed during prosecution in the Patent Office, and no file wrapper estoppel can be invoked to restrict them [file wrapper offered in evidence, R. 176-177; Defendant's Exhibit C; treated as a physical exhibit not reproduced in the Book of Exhibits].

There is no conflict of decisions between courts of appeal involving the Gibbs patent in suit. The patent has been sustained as valid and infringed in the only two jurisdictions where it has been contested, namely, the Eastern District of New York, *Gibbs v. T. Z. R. Amusement Corporation*, 14 Fed. Supp. 957 (1936) (no appeal being reported), and in the Southern District of California and the appeal from that Court to the Court of Ap-

peals for the Ninth Circuit which is the instant case, the opinion of the Court of Appeals appearing in Volume III of the Record, page 538, and being reported at 170 F. 2d 34, 79 U. S. P. Q. 158.

In addition to the contested cases, Respondent Gibbs succeeded in obtaining six Consent Judgments acknowledging the patent to be valid and infringed in the United States District Courts in the States of California, Connecticut and New York [R. 34-35, 61-62, 70-71; Plaintiff's Exhibits No. 4 and No. 5 offered in evidence, R. 62, appear in Book of Exhibits, pp. 355 and 358]. The two Consent Judgments in California were entered *prior* to the trial of the instant case.

In one of the cases in which judgment was entered by consent, namely, *Gibbs v. Hicks, et al.*, Mr. Harold W. Mattingly appeared as attorney for the defendants [Book of Exhibits 359]. He thereafter testified *as the expert witness* for the defendant Faulkner, Petitioner here, in the trial before the District Court [R. 159, 176 (180), 238]. If the length of his testimony is the correct index, he was the chief defense witness. He now appears as attorney for the Petitioner in this Court and is therefore in the position of arguing to this Court as an advocate that his opinion as a witness should prevail.

Argumentative comments in Petitioner's statement to the extent deemed pertinent will be considered in our argument.

### Summary of the Argument.

I. A review on Writ of Certiorari is not a matter of right.

II. The decision of the Court of Appeals for the Ninth Circuit in the instant case is not in conflict with this Court's decisions in the *General Electric* and *Halliburton* cases (*infra*) or other applicable decisions of this Court.

III. The decision of the Court of Appeals affirming the decision of the District Court holding claims 9 and 10 infringed notwithstanding that claims 6, 7 and 8 were held not infringed by the "altered" Fawn game is not so inconsistent on its face as to constitute such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

IV. The Court of Appeals re-examined the findings of the District Court in the light of the evidence and accepted them. "It must be a strong case in which this court will set aside" such concurrent findings of two courts.

V. There are no issues of great moment to the public in this case.

## ARGUMENT.

### I.

#### A Review on Writ of Certiorari Is Not a Matter of Right.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor."

Rule 35, Section 5, Rules of the Supreme Court of the U. S.

In Section 5(b) indicating the character or reasons which will be considered, two of the reasons set forth are:

"Where a circuit court of appeals \* \* \* has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

These are the only two reasons provided by the rule attempted to be invoked by the petitioner, who endeavors to reinforce his case for a writ of certiorari by arguing that issues of great moment to the public are involved and that further litigation involving the patent in suit which might result in conflict between courts of appeal is improbable.

MATTHEW

II.

**The Decision of the Court of Appeals for the Ninth Circuit in the Instant Case Is Not in Conflict With This Court's Decisions in the General Electric and Halliburton Cases (infra), or Other Applicable Decisions of This Court.**

The claim selected as typical by this Court in *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364, 58 S. Ct. 899, 82 L. Ed. 1402, was Claim 25 in Patent No. 1,410,499 relating to tungsten filaments for incandescent lamps. The claim read as follows:

"25. A filament for electric incandescent lamps or other devices, composed substantially of tungsten and made up mainly of a number of comparatively large grains of such size and contour as to prevent substantial sagging and offsetting during a normal or commercially useful life for such a lamp or other device."

This Court condemned such a claim as "invalid on its face" (p. 368). The Court further pointed out that in a limited field the variant must be clearly defined, and that the patent involved was one in a series of patents all dealing with filaments, and that the claim uses indeterminate adjectives which describe the function of the grains to the exclusion of any structural definition.

This Court recognized (p. 371) that

"A limited use of terms of effect or result, which accurately define the essential qualities of a product to one skilled in the art, may in some instances be permissible and even desirable, \* \* \*."



It is obvious that the claim was not for a combination of elements but directed solely to a filament for electric incandescent lamps and made of tungsten. The "exact point of novelty," if any, presumably would have resided in the specific details of the granular construction of the tungsten wire, which details were lacking.

In *Halliburton Oil Well Cementing Co. v. Walker*, 329 U. S. 1, 91 L. Ed. 3, 67 S. Ct. 6, the claims involved were combination claims covering an apparatus composed of old and well-known devices to measure the time required for pressure waves to move to and back from the fluid surface of an oil well to which Walker added a well-known device which would make the regularly appearing shoulder echo waves more prominent on the graph and easier to count. The device added was a mechanical acoustical resonator.

Claim 1 of the patent, accepted as a typical example, read as follows:

"In an apparatus for determining the location of and obstruction in a well having therein a string of assembled tubing sections interconnected with each other by coupling collars, means communicating with said well for creating a pressure impulse in said well, echo receiving means including a pressure responsive device exposed to said well for receiving pressure impulses from the well and for measuring the lapse of time between the creation of the impulse and the arrival at said receiving means of the echo from said obstruction, and means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

As this Court pointed out (p. 8):

"But no one of the claims on which this judgment rests has even suggested the physical structure of the acoustical resonator. No one of these claims describes the physical relation of the Walker addition to the old Lehr and Wyatt machine. No one of these claims describes the manner in which the Walker addition will operate together with the old Lehr and Wyatt machine so as to make the 'new' unitary apparatus perform its designed function."

The Court continued,

"The language of the claim thus describes this most crucial element [the acoustical resonator] in the 'new' combination in terms of what it will do rather than in terms of its own physical characteristics or its arrangement in the new combination apparatus."

Claim 3 of the Gibbs Patent No. 1,906,260 in suit reads as follows:

"A game apparatus comprising a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators, means for electrically connecting said indicators with a source of electric current and with said contact devices, said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups, means for energizing said indicators as the associated contact devices are operated, an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized, and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

Petitioner is in error in urging that the "means for energizing said indicators" defines the only novelty in the claim. The Petitioner seizes upon that clause in the claim because it is the only phrascology in the claim upon which he can attempt to apply the *General Electric* and *Halliburton* cases.

Obviously, Gibbs Claim 3 is not a "single means" claim of the character condemned in the *General Electric* case. That leaves the *Halliburton* case as the only decision of this Court cited by Petitioner from which he can attempt to draw an analogy. But the claims in the *Halliburton* and the instant case are not parallel. Gibbs Claim 3, after introducing the subject as a game apparatus, recites eight inter-related elements:

- (1) a board,
- (2) a plurality of contact devices,
- (3) an object,
- (4) a plurality of indicators,
- (5) means for electrically connecting,
- (6) means for energizing said indicators,
- (7) an electrical circuit common, etc.,
- (8) supplementary means for indicating, etc.

and describes them and their arrangement and mutuality with sufficient particularity to portray the apparatus to anyone skilled in the art.

Petitioner insists that Gibbs Claim 3 is basically the old game of Nakashima [prior art patent offered, R. 179, reproduced in Book of Exhibits 373] or Hayashi [prior art patent offered, R. 179, reproduced in Book of Exhibits 383], but he does not find a counterpart in the prior art for what he identifies as the only novel feature, namely,

"means for energizing," and he likewise fails to find a counterpart in the prior art for Gibbs' combination.

All that Nakashima discloses for the purpose of this case is a game which involves rolling balls into one or more pockets, and a visible signal or signals in an annunciator. The Nakashima amusement device is a single unit in which a player has *three* balls to roll. When a ball enters a pocket it lodges there, is not returnable to the player, and may or may not encounter a switch in a live circuit. The ball must remain in the pocket to hold the switch closed, and if the player rolls the three balls and none of them happen to enter a live circuit pocket, no lights are illuminated.

In the Gibbs game a single ball (an object moved over the board by a player as described in Claim 3) is used which, having entered a hole and having actuated an electric switch, returns to the player for a re-play.

This is referred to in the claim by the language, "a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player." Thus the claim in its very inception distinguishes and departs from the principal construction and function of the Nakashima prior art patent.

Claim 3 further specifies that the indicators and the contact devices *correspond* in number and arrangement and are subdivided into *corresponding groups*. This phase of Claim 3 also precedes the "means for energizing" clause. Nakashima, upon which Petitioner so heavily relies, does not have that feature. The location of the switches for live circuits in Nakashima has no relation to the location of the lights on the panel at the end of the game board. Nakashima's whole game object is merely to roll three balls into three live switch pockets, respec-

tively, avoiding having the balls enter dead pockets, and light up *any three* lights on the back board. Nakashima completely fails to anticipate that portion of Gibbs Claim 3 preceding the clause "means for energizing" where, says the Petitioner, erroneously, the novelty lies.

Petitioner's second best reference is Hayashi. That patent discloses what is called a "Japanese Peanut Ping Pong Game" in which the playing board is inclined downwardly away from the player instead of upwardly from, as in Gibbs, so that the objects played with are not returnable to the player. He is provided with three objects in the form of peanuts which are weighted so that, as the patentee says, instead of rolling in a direct path they will zigzag not only down the board but also partly across the same. When the three peanuts, or whatever number may be allotted to the player, have been projected the game is over and the player is credited by adding up the values attributed to the particular lights which have been illuminated. The weighted peanuts have to remain in the pockets in order to keep the lights lighted. Hayashi is therefore more remote from the Gibbs claim than is Nakashima.

The same considerations discussed in reference to Claim 3 apply in general and without any necessary distinctions to the other claims in suit.

Gibbs "means for energizing" may utilize a relay switch or a mechanically operated switch, and far from being the "exact point of novelty" is only one of the several elements recited, all of which are necessary to a unitary game apparatus.

The Court of Appeals therefore properly found a patentable combination to be present and suitably defined.



III.

6. The Decision of the Court of Appeals Affirming the Decision of the District Court Holding Claims 9 and 10 Infringed Notwithstanding That Claims 6, 7 and 8 Were Held Not Infringed by the "Altered" Fawn Game Is Not So Inconsistent on Its Face as to Constitute Such a Departure From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of This Court's Power of Supervision.

On the contrary, the holding of claims 9 and 10 to be infringed was correct and is supported by the evidence. Only claims 6 and 9 need be discussed in this connection, as claims 7 and 8 are dependent upon claim 6 and claim 10 is dependent upon claim 9.

Claim 9 has some of the principal elements of claim 6 in that it defines a plurality of electrically connected units (of the order of claim 3), but is **broad**er than claim 6 in the final element, "means *controlled by* [emphasis added] the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units."

Thus: referring back to claim 6, the transfer circuit functions by *reason of* or *by action of* the completion of a win circuit, and is constituted to perform *two* functions: i. e. (1) to deenergize the non-winners, and (2) to maintain the win unit energized. In claim 9, the same general circuit is described more broadly, and functions not by reason of or by action of the completion of a win circuit, but is *merely controlled by* a win circuit, and need be constituted to perform only *one* function, i. e., to control or condition the opening of the non-winner circuits. The same meaning as "controlled by" would be properly ex-

pressed as *conditioned by*. It controls to the extent of severing the circuits and thus conditioning the win circuit to remain energized, the others to be deenergized when the time switch is thrown.

Thus, claim 9 is infringed not only by the old Fawn game, which it obviously comprehends in view of the discussion of claim 6, but is also infringed by the "<sup>e</sup>altered" Fawn game.

In this "altered" Fawn game, the circuit which opens the non-winner circuits is *prepared or conditioned by*, and consequently *controlled by*, the win circuit or circuits. The time switch, which is merely an accessory, may delay the action, but when a pre-determined time elapses, the cut-off circuit functions under the control of the win circuit or circuits. Claim 9 is thus clearly infringed by the "altered" Fawn game.

Claim 10 adds to claim 9 the audible signal, present in both Fawn games, and thus is infringed by both.

The point raised by the petitioner discussed here, even if he were correct, would not affect the judgment of the District Court and of the Court of Appeals, since claim 3 is not involved in the point, and the judgment would stand on the basis of claim 3 being valid and infringed by both forms of petitioner's games.

IV.

**The Court of Appeals Re-examined the Findings of the District Court in the Light of the Evidence and Accepted Them. "It Must Be a Strong Case in Which This Court Will Set Aside". Such Concurrent Findings of Two Courts.**

*Goodyear Tire & Rubber Company, Inc., et al. v. Ray-O-Vac Company*, 321 U. S. 275, 64 S. Ct. 593, 88 L. Ed. 721, citing:

*Williams Mfg. Co. v. United Shoe Machinery Corporation*, 316 U. S. 364, 367, 86 L. Ed. 1537, 62 S. Ct. 1179.

Cited with approval in:

*Universal Oil Products Company v. Globe Oil & Refining Company*, 322 U. S. 471, 88 L. Ed. 1399, 64 S. Ct. 1110.

V.

**There Are No Issues of Great Moment to the Public in This Case.**

An ordinary patent case is not entertained by this Court in the absence of conflict between courts of appeals.

Petitioner's reference [petition and brief, pp. 19 and 20] to quotations concerning public interest in patent rights does not alter the rule. In all of the cases cited extraordinary circumstances were present.

Thus, *Precision Instr. Mfg. Co. v. Automotive M. Mach.*, 324 U. S. 806, 89 L. Ed. 1381, 65 S. Ct. 993 (re-hearing denied), 325 U. S. 893, 65 S. Ct. 1189, 89 L. Ed. 2005, dealt with a serious case of fraud, deceit and perjury in connection with patents.

In *United Carbon Co. v. Binney & Smith Co.*, 317 U. S. 228, 233, 63 S. Ct. 165, 87 L. Ed. 232, the patent in suit related to carbon black (a product of obvious public importance). The District Court had found the claims invalid and the Circuit Court of Appeals reversed, whereupon the importance of the questions in the case prompted this Court to grant certiorari. The most extensive of many uses for carbon black at the time of the decision, 1942, was as a binder in automobile tires. It was also used as an ingredient in various rubber, wax and resin compositions, phonograph records, paints and lacquers, printers' ink, and carbon paper, facts pointed out in the opinion of this Court. The claims held by this Court bad for indefiniteness read as follows (317 U. S. 231):

"1. Substantially [sic] pure carbon black in the form of commercially uniform, comparatively small, rounded, smooth aggregates having a spongy or porous interior.

"2. As an article of manufacture, a pellet of approximately one-sixteenth of an inch in diameter and formed of a porous mass of substantially pure carbon black."

The claims of respondent Gibbs are clearly not subject to the same criticism.

In *Muncie Gear Works v. Outboard M. & Mfg. Co.*, 315 U. S. 759, 62 S. Ct. 865, 86 L. Ed. 1171, this Court granted certiorari in view of certain serious questions presented,

"and because the patent dominates a substantial portion of an industry [outboard motors] so concentrated in the Seventh Circuit that litigation in other circuits, resulting in a conflict of decisions, is unlikely." (p. 766.)

In *Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U. S. 86, 59 S. Ct. 427, 83 L. Ed. 506, the subject of the patent in suit related to radio communication and this Court granted certiorari

"because of the nature and importance of the case, on a petition which urged as grounds for its allowance that validity and infringement of the Carter patent were in doubt and that, as petitioner is the only competitor of the respondent in the business of world wide public radio communication, further litigation, resulting in conflict of decision among circuits, was improbable." (p. 89.)

### Conclusion.

The Gibbs patent, granted May 2, 1933, will expire in slightly more than a year. Its validity was questioned once in 1936 by the defendants in *Gibbs v. T. Z. R. Amusement Corporation*, *supra*, and once in 1946-47 by the petitioner Faulkner. In both cases the courts found the patent valid. Meanwhile it enjoyed commercial success and provided diversion for the people who patronized its game, but it has no nation-wide or world-wide significance.

There is no evidence of intimidation by respondent, and the petitioner's point in that respect on page 19 of his



petition and brief is without foundation. There may be no further litigation which might result in conflicts between courts of appeals but there *has been opportunity* for several contests in different circuits, and concurrent decisions have resulted in New York and California.

There is no localization of the industry represented by the Gibbs patent and unless and until some infringer, not now shown to exist, should succeed in the brief space left before the patent expires in securing a decision in another court of appeals holding the patent invalid, and thus creating a conflict, this Court should not be burdened by a review of the case.

Respectfully submitted,

HERBERT A. HUEBNER,

*Attorney for Respondent.*

Los Angeles, California, February 23, 1949.

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IN THE

**Supreme Court of the United States**

October Term, 1949.

No. 19

TODD C. FAULKNER,

*Petitioner,*

*v/s.*

JOHN T. GIBBS,

*Respondent.*

**BRIEF FOR JOHN T. GIBBS, RESPONDENT.**

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IN THE  
**Supreme Court of the United States**

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October Term, 1949.

No. 19

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TODD C. FAULKNER,

*Petitioner,*

vs.

JOHN T. GIBBS,

*Respondent.*

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**BRIEF FOR JOHN T. GIBBS, RESPONDENT.**

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**Opinions Delivered in the Courts Below.**

Respondent John T. Gibbs brought suit in the United States District Court for the Southern District of California, Central Division, for infringement of claims 3 and 6 to 10 of his Patent No. 1,906,260 for a Game. The District Court did not write an opinion but, after discussion with counsel, at the close of the trial rendered its decision for the plaintiff, Respondent Gibbs, holding his patent as to the claims in suit valid and infringed by one form of a game constructed and operated by the defendant, Petitioner Faulkner, and claims 3, 9 and 10 infringed by a second form of the defendant's game.

Findings of Fact and Conclusions of Law were made by the District Court at R. 33-40 and an Interlocutory Judgment entered at R. 41-43.

On appeal to the Court of Appeals for the Ninth Circuit that court affirmed, 170 F. 2d 34, 79 U. S. P. Q. 158 [R. 538]. A petition for rehearing was denied November 23, 1948 [R. 548].

For an earlier concurring opinion on the same patent see *Gibbs et al. v. T. Z. R. Amusement Corporation et al.*, District Court, Eastern District of New York, 14 F. Supp. 957.

### **Jurisdiction of This Court.**

The case is in this Court on certiorari granted March 28, 1949, 336 U. S. 935, 93 L. Ed. Adv. Op. 645.

As there was no conflict of decisions between Circuits, and Petitioner's Petition for Writ of Certiorari was granted without an opinion, we have no knowledge of the particular grounds upon which this Court accepted jurisdiction.

### **Statement of the Case.**

We do not find it feasible to correct inaccuracies or omissions in the statement of the case contained in Petitioner's brief, and for that reason and to preserve a continuity we present the following statement:

#### **THE GIBBS PATENT.**

The Gibbs patent in suit, No. 1,906,260, applied for February 16, 1931, on a Game, issued May 2, 1933 [offered R: 55, copy in Book of Exhibits 295]. There are ten claims in the patent, all directed to a "game apparatus." Claims 3 and 6 to 10, inclusive, are involved in this suit.

The Gibbs game unit comprises a game board with holes corresponding to electric lights on an annunciator panel. A single ball is provided for the player to throw or roll



over the board and which, when dropping through a hole, will actuate an electric switch, dropping past it and returning each time to the player for a successive roll. Electrical circuits are provided whereby one of the electric lamps is energized when the corresponding switch is closed. The apparatus includes means such as a relay to maintain the circuit closed. This function can also be performed by an overbalanced switch or a switch of a releasable spring clamp type. The circuits are grouped so that when a line of lights, horizontal, vertical or diagonal, is energized a win circuit is established, a signal of some sort results, and the winner or winners of a plurality of these game units, which are electrically interconnected, remain lighted after the non-winners are de-energized.

This essence of the invention is clearly defined in the claims when read in the light of the description and drawings. The claims in suit are here copied.

"3. A game apparatus comprising a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators, means for electrically connecting said indicators with a source of electric current and with said contact devices, said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups, means for energizing said indicators as the associated contact devices are operated, an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized, and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized."

"6. A game apparatus comprising a plurality of units electrically connected together, each of said units

including a plurality of contact devices and a plurality of indicators corresponding in number and subdivided into corresponding groups, means for electrically connecting the contact devices with the corresponding indicators, means for electrically connecting said units together and with a source of electric current, said indicators adapted to be operated when and as objects are moved by the players into engagement with the contact devices, and means whereby when all of the indicators in any group of any one of said units have been operated to complete a winning play, the indicators on all of the units except the winning unit will be deenergized, while the indicators at the winning unit will remain energized, for the purpose described."

"7. A game apparatus as characterized in claim 6, including an independent supplementary signal at each of said units for signaling a winning play to the players."

"8. A game apparatus as characterized in claim 6, including an independent supplementary signal at each of said units for signaling a winning play to the players, and means under the control of an operator for opening and closing the circuits of all of said units simultaneously at will."

"9. A game apparatus comprising a plurality of electrically connected units, each including a game board with a plurality of apertures therein, and an annunciator with a plurality of indicators thereon, electrical contacts adjacent each of said apertures connected in the circuits of said indicators, said indicators and said apertures corresponding in number and subdivided into corresponding groups, whereby when objects are deposited in said apertures by the players at the several units corresponding indicators will be energized, a supplementary signal circuit on each of said units, and means for holding said signal

circuit open until all of the indicators of any group on each of said units have been energized, and for closing said signal circuit when all of the indicators of any unit have been energized, and means controlled by the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units."

"10. A game apparatus as characterized in claim 9, including an audible signal commonly connected with all of said units and adapted to be operated upon the closing of the supplementary signal circuit of any of said units."

#### GENERAL CHRONOLOGY.

Gibbs, the owner of the patent, Respondent here, commercialized his game by its introduction and operation in amusement parks during and subsequent to the year 1930, most installations being identified by the name "Fascination" [R. 67].

In the early 1930's, when he was operating his patented game in Coney Island, the game was copied there by the T. Z. R. Amusement Corporation. Gibbs brought suit for infringement in the Eastern District of New York. His patent as to all the claims thereof was held valid and infringed by District Judge Byers, in *Gibbs et al. v. T. Z. R. Amusement Corporation et al., supra*. Judge Byers made Findings of Fact and Conclusions of Law in addition to the reported opinion, said Findings and Conclusions being in evidence here [R. 60], text found in Book of Exhibits, page 344.

We call attention to one of the findings, Book of Exhibits, page 351, as follows:

"Seventeenth: That for the successful operation of the game of the Letters Patent in suit there are

certain structural and functional requirements which are fulfilled by the devices set forth in the claims 1 to 10 of said Letters Patent in suit, which are not disclosed or suggested in any of the games of the prior art, and which do not teach the construction, method of operation or results obtained and do not fulfill the requirements of the structures set forth in any of the claims 1 to 10 of the Letters Patent in suit."

The reported opinion shows that Judge Byers fully considered a number of prior art patents including, among others, Nakashima No. 1,678,573 [R. 376], Esmarian No. 1,612,912 [R. 393], and Irsch No. 1,433,888.

Nakashima was a reference in the file wrapper of the Gibbs patent and was selected by Petitioner's expert witness in the present case as one of the closest references. [R. 214]. The Esmarian patent is also one of Petitioner's prior art patents in the present case. The Irsch patent considered by Judge Byers was not put in evidence in the present litigation, but it finds its counterpart in the Irsch Patent No. 1,458,884 cited in the present case to show a cut-off principle when a win is made.

Gibbs brought other infringement suits on the same patent in three different jurisdictions which resulted in Consent Judgments in his favor as follows:

*Gibbs et al. v. Surfeo Amusement Corp. et al.*,  
No. E-8577, Eastern District of New York, Consent Judgment October 28, 1938;

*Gibbs v. Scientific Machine Corporation*, Civil No. 2175, Eastern District of New York, Consent Judgment January 24, 1942;

*Gibbs et al. v. Stanley Gersh*, Civil No. 5728, Eastern District of New York, Consent Judgment August 29, 1945;

*Gibbs v. Vincent Anderson*, Civil No. 1556, District of Connecticut, Consent Judgment April 25, 1946;

*Gibbs v. Levy*, Eastern District of New York. (Date of Consent Judgment does not appear in the record here.)

The foregoing Consent Judgments were established by testimony of Respondent on stipulation of opposing counsel that copies of the Consent Judgments need not be produced [R. 70-71].

Continuing:

*Gibbs v. Looff*, No. 5143-O'C Civil, Southern District of California, Consent Judgment August 27, 1946 [offered R. 61, Plaintiff's Exhibit 4, Book of Exhibits 355];

*Gibbs v. Hicks, et al.*, No. 5565W, Southern District of California, Consent Judgment January 21, 1947 [offered R. 62, Plaintiff's Exhibit 5, Book of Exhibit 358].

By inadvertence of Respondent's counsel, only six of the seven Consent Judgments are enumerated in the Findings of Fact [Finding VI, R. 34-35].

All these Consent Judgments were entered prior to commencement of the trial in the present case, which began February 19, 1947 [R. 55].



Gibbs authorized numerous licensed operations on royalty consideration commencing at Long Beach, California in December of 1930 and located variously in New York, Massachusetts, Connecticut, New Jersey, Ohio, California and England. The specific locations are referred to at R. 66.

Prior to the grant of the patent Gibbs made two outright sales of the patented game and, except for those two, royalties are paid on all of the licensed games [R. 67-68].

At the time of the trial in the instant case Gibbs had no knowledge of any operations which he alleged to infringe other than the game operated by Petitioner Faulkner [R. 69]. In contrast to this there were approximately 1,500 authorized units then in use, a number of these units being grouped together to make one game [R. 66].

Gibbs had the statutory patent notice on all games licensed or manufactured after the patent issued [R. 68].

#### ORIGIN AND NATURE OF PETITIONER'S GAME

Petitioner Faulkner saw a game in operation on the Pike at Long Beach, California, operated by one Arthur Loeff and others who were later defendants in the Consent Judgment, Plaintiff's Exhibit 4. The Loeff game had been copied from a local Gibbs game [R. 80 *et seq.*], and Faulkner in turn copied the Loeff game [R. 91-93], Findings of Fact [Finding XIII, R. 38], and called his the Fawn game [R. 94].

This first Fawn game and its use by Petitioner was the subject of the Complaint in the present case. After the Complaint was filed, Petitioner made some changes and brought the modified game into the case by Counterclaim.

The original Fawn game was similar to the Gibbs patented game in all material respects, namely, it was made up of a plurality of game units each comprising a game board with holes corresponding to electric lights on an annunciator panel. A single ball was provided for the player to roll over the board and which, when dropping through a hole, would actuate an electric switch, dropping past it and returning each time to the player for a successive roll. Electrical circuits were provided whereby one of the electric lamps would be energized when the corresponding switch was closed. To hold the circuit closed, Petitioner employed a weight on the switch (instead of an electrical relay), an element known as a substitute for an electrical relay prior to the Gibbs patent (Petitioner's Brief p. 40). The circuits in the Fawn game were grouped so that when a line of lights, horizontal, vertical or diagonal, was energized a win circuit was established, a signal resulted, and the winner of a plurality of these game units, which were electrically interconnected, remained lighted after the non-winners were de-energized.

A detailed description with illustrations of the Fawn game is contained in a stipulation [Plaintiff's Exhibit 2, offered R. 56-57, text in Book of Exhibits 309].

In Petitioner's modified Fawn game the physical elements of playing board, annunciator light panel, playing balls, arrangement and grouping, remained identical. The electrical circuits remained the same with these exceptions which are immaterial: certain light bulbs were unscrewed from their circuits, one wire connection was shifted, and an electric time switch was added as an accessory. The method of play was the same as before: each player sat before his unit playing board and rolled a ball into the holes, endeavoring by repeated rolling of the ball to light up five lights in a row and thereby become a winner. All the time switch did was to limit the period in which a game could be played. That was purely an addition to, not an omission from, the primary claimed features of the Gibbs patent. Its merits or demerits are, therefore, inconsequential here.

The stipulation, Plaintiff's Exhibit 2, in conjunction with certain additional drawings and testimony, must be considered together for ascertaining the specific changes and their effect, if any.

#### PROCEEDINGS.

Conflicting evidence was introduced at the trial particularly with respect to the similarity or dissimilarity of the working parts and electrical circuits between the Gibbs' patent and the defendant's apparatus. The mechanisms employed in both games, being somewhat intricate, required explanation and expert testimony.

Prior art patents and a catalogue put in evidence by Petitioner were considered by the court.

Bryan R. Burke was the chief expert for the plaintiff. Respondent here. Burke is an electrical engineer holding a university degree in electrical engineering, a Master's degree in physics and mathematics, and having served as an employee of the General Electric Company and others [R. 97].

Petitioner's expert was Mr. Harold W. Mattingly, a Los Angeles patent attorney who represented the defendants in one of the Consent Judgments, *Gibbs v. Hicks, et al.* [Plaintiff's Exhibit No. 5, Book of Exhibits 358], and who appears with Mr. Robert W. Fulwider as attorney for the Petitioner in this Court.

District Judge Yankwich resolved the conflicting testimony of Messrs. Burke and Mattingly and other conflicting evidence in favor of Gibbs.

His Findings of Fact and Conclusions of Law [R. 33 *et seq.*], held the Gibbs patent valid as to claims 3 and 6 to 10, inclusive, which were the only claims in suit, and all of the claims in suit infringed by the original form of Petitioner's game, and claims 3, 9 and 10 infringed by the modified form of Petitioner's game.

In its opinion on the appeal, the Court of Appeals, speaking through Judge Bone, made reference to the findings of the District Court, summarized the same, and adopted them.

There have been no conflicting decisions involving the Gibbs patent at any time in any court.

### Comment Preliminary to Argument.

Inasmuch as we do not know why this Court granted certiorari, we are at some loss to fix upon points for argument.

1. There was no conflict of decision between circuits, but on the other hand concurring decisions of the District Court in New York, *Gibbs et al. v. T. Z. R. Amusement Corporation*, *supra*, the District Court in California, *Gibbs v. Faulkner* (the present case), the latter affirmed in all respects by the Court of Appeals for the Ninth Circuit.

2. There is no important public interest in the patented invention.

3. There is no prolonged future patent monopoly involved, as the Gibbs patent expires in about eight months.

4. We can only speculate as to whether this Court desires to consider

(a) Whether the Court of Appeals erred in ruling that the questions of invention and infringement in this case are questions of fact, or

(b) Whether the Court of Appeals decided the case contrary to applicable decisions of this Court, or

(c) Whether to distinguish the case at bar from *Haliburton Oil Well Cementing Co. v. Walker et al.*, 329 U. S. 1, 91 L. Ed. 3, 67 S. Ct. 6, 71 U. S. P. Q. 175.

Items 1 to 3 are self evident, and probably regarded as secondary. We will therefore develop item 4 with its subdivisions at greater length.



Summary of Argument.

I.

Questions of invention and infringement are questions of fact, and the concurrent findings of the courts below on these issues will not be disturbed unless clearly erroneous.

II.

The findings of the courts below in favor of Respondent on the issues of invention and infringement are fully supported by the evidence, and should be sustained.

III.

The Gibbs patent claims define patentable combinations, and in holding them valid, the Court of Appeals followed applicable decisions of the Supreme Court.

IV.

If this Court's decision in *Halliburton Oil Well Cementing Co. v. Walker et al.*, *supra*, is susceptible of being construed to bar "means" claims for a combination of elements irrespective of the position of the invention in the art, such decision should be explained, clarified or distinguished, and the fundamental principles of patent interpretation announced by this Court in *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 52 L. Ed. 1122, 28 S. Ct. 748, be re-affirmed as controlling in appropriate cases.

ARGUMENT.

I.

Questions of Invention and Infringement Are Questions of Fact, and the Concurrent Findings of the Courts Below on These Issues Will Not Be Disturbed Unless Clearly Erroneous.

*Keyes et al. v. Grant et al.*, 118 U. S. 25, 30 L. Ed. 54, 6 S. Ct. 950;

*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 240 U. S. 405, 52 L. Ed. 1122, 28 S. Ct. 748;

*Thomson Spot Welder Company v. Ford Motor Company*, 265 U. S. 445, 68 L. Ed. 1098, 44 S. Ct. 533;

*Stilz v. United States*; 269 U. S. 144, 70 L. Ed. 202, 46 S. Ct. 37;

*Corona Cord Tire Co. v. Dorian Chemical Corp.*, 276 U. S. 358, 72 L. Ed. 610, 48 S. Ct. 380;

*Sanitary Refrigerator Company v. Alexander F. Winters*, 280 U. S. 30, 74 L. Ed. 147, 50 S. Ct. 9, 3 U. S. P. Q. 40;

*Goodyear Tire & Rubber Co. v. Ray-O-Vac Co.*, 321 U. S. 275, 88 L. Ed. 721, 64 S. Ct. 593, 60 U. S. P. Q. 386;

*Graver Tank & Manufacturing Company, Inc., et al., v. The Linde Air Products Company*, 336 U. S. 271, 93 L. Ed. Adv. Op. 492, 80 U. S. P. Q. 451.

In *Keyes et al. v. Grant et al.*, *supra*, the case related to an improvement in lead smelting furnaces. The following language from the decision at 118 U. S. 25, 30, L. Ed. 57, is in point:

"The judgment entered on the verdict rendered in favor of the defendants, in pursuance of the direction of the court, can be maintained only on the ground, either that the legal identity of the furnace described by Karsten with that covered by the plaintiffs' patent was manifest as a matter of law; or that it was established as a matter of fact so conclusively by the evidence that a verdict the other way could not be supported, within the rule as stated in *Randall v. Baltimore & O. R. R. Co.*, 109 U. S. 478, (Bk. 27, L. ed. 1003).

Clearly it was not matter of law that the specification of the plaintiffs' patent, and the publication of Karsten, taken in connection with the drawings intended in illustration, described the same thing. The differences were obvious in the arrangement of the parts, and the relation of the basin in one, and the fore hearth in the other, to the interior of the furnace, and the mode of connecting the one with the other for the purpose of drawing the metal from the furnace. So that it certainly was not a matter of mere judicial knowledge that these differences were either not material in any degree to the result or, if material at all, were only such as would not require the exercise of the faculty of invention but would be suggested by the skill of an experienced workman employed to produce the best result in the application of the well known arrangements of the furnace.

In *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, *supra*, the case related to patent for a paper bag machine. The District Court of Maine held the patent valid and infringed, which decision was affirmed by the First Circuit Court of Appeals and subsequently affirmed by the Supreme Court. This court said, at 210 U. S. 416, 52 L. Ed. 1127:

"The lower courts, therefore, found that the invention was a broad one, and that the machine used by the Continental Company was an infringement. And these were questions of fact upon which, both of the courts concurring, their findings will not be disturbed, unless clearly wrong."

In *Thomson Spot Welder Company v. Ford Motor Company*, *supra*, the District Court for the Eastern District of Michigan dismissed a bill filed to enjoin alleged infringement of a patent. The Sixth Circuit Court of Appeals affirmed the District Court. The Supreme Court affirmed the Circuit Court.

The case related to a patent for electric spot welding said to be anticipated by prior electric welding patents. The following language at 265 U. S. 446, 68 L. Ed. 1100 is pertinent:

\* \* \* The question whether an improvement requires mere mechanical skill or the exercise of the faculty of invention is one of fact; and, in an action at law for infringement, is to be left to the determination of the jury. *Keyes v. Grant*, 118 U. S. 25, 36, 37, 30 L. ed. 54, 57, 58, 6 Sup. Ct. Rep. 950; *Holmes v. Truman*, 14 C. C. A. 517, 29 U. S. App. 572, 67 Fed. 542, 543; *Hall v. Wiles* (C. C.), 2 Blatchf. 194, Fed. Cas. No. 5,954; *Poppenhusen v. Falke* (C. C.), 5 Blatchf. 46, Fed. Cas. No. 11,280;

*Shuter v. Davis* (C. C.), 16 Fed. 564, 566; *Blessing v. John Trageser Steam Copper Works* (C. C.), 34 Fed. 753, 754. Ordinarily, therefore, the case would call for the application of the well-settled rule that the concurrent findings of the lower courts on questions of fact will be accepted by this court unless clear error is shown."

This court noted an exception to the rule, *which does not apply here*, as follows:

"\* \* \* We think, however, that this rule should not be strictly applied in cases brought here because of a conflict of decision in the different circuit courts of appeal, and have therefore given consideration to the question as to which of the decisions upon this question of fact, in the light of the prior art, is based upon the sounder reasoning."

In *Stilz v. United States*, *supra*, this court, in an appeal from the Court of Claims, stated at 269 U. S. 147, 70 L. Ed. 203:

"Infringement is a question of fact. The quoted finding is in the nature of special verdict of a jury. *United States v. Societe Anonyme des Anciens Etablissements*, 224 U. S. 309, 322, 330, 56 L. ed. 778, 785, 788, 32 Sup. Ct. Rep. 479; *Brothers v. United States*, 250 U. S. 88, 93, 63 L. ed. 859, 862, 39 Sup. Ct. Rep. 426. This Court accepts the findings of fact made by the Court of Claims and cannot review them. *Collier v. United States*, 173 U. S. 79, 80, 43 L. ed. 621, 622, 19 Sup. Ct. Rep. 330. And even where a finding determines a mixed question of law and fact, it is conclusive unless the court is able to separate the question to see whether there is a mistake of law. *United States v. Omaha Tribe of Indians*, 253 U. S. 275, 281, 64 L. ed. 901, 905, 40 Sup. Ct. Rep. 522, *Ross v. Day*, 232 U. S. 110, 116,



58 L. ed. 528, 529, 34 Sup. Ct. Rep. 233; *Whitcomb v. White*, 214 U. S. 15, 16, 53 L. ed. 889, 890, 29 Sup. Ct. Rep. 599; *Marquez v. Frisbie*, 101 U. S. 473, 476; 25 L. ed. 800, 801."

In *Corona Cord Tire Co. v. Doran Chemical Corp.*, *supra*, a case involving a chemical formula for vulcanizing rubber, the United States District Court for the Western District of Pennsylvania dismissed a bill for infringement. The Third Circuit Court of Appeals reversed the District Court and also in turn was reversed by the Supreme Court. In this case as in others the Supreme Court justified its review of the facts on the ground that there was a conflict in cases in the courts below, stating as follows at 276 U. S. 375, 72 L. Ed. 616:

"It is also claimed that because the trial court in this cause found, after hearing the witnesses, the weight to be with the petitioner and against Weiss, assignor of respondent, his conclusions of fact, except for manifest error, are to be treated as unassailable. *Addamson v. Gilliland*, 242 U. S. 350, 353, 61 L. ed. 356, 357, 37 Sup. Ct. Rep. 169; *Davis v. Schwartz*, 155 U. S. 631, 39 L. ed. 389, 15 Sup. Ct. Rep. 237; *Kimberly v. Arms*, 129 U. S. 512, 32 L. ed. 764, 9 Sup. Ct. Rep. 355; *Tilghman v. Proctor*, 125 U. S. 136, 149, 31 L. ed. 664, 668, 8 Sup. Ct. Rep. 894, and *Mason v. United States*, 260 U. S. 545, 556, 67 L. ed. 396, 400, 43 Sup. Ct. Rep. 200. We do not think that this rule applies in the case before us at least to its full extent, first, for the reason that the circuit court of appeals, having considered all the evidence upon which the trial judge reached his conclusion, declined to approve of his findings, and second, because in the *National Aniline & Chemical Co. Case*, which is in conflict with the case here, the trial judge reached a different conclusion on the

same issue and the same evidence which we have here."

The attitude of the Supreme Court on the point under discussion is well summed up in the case of *Sanitary Refrigerator Company v. Alexander F. Winters, supra*. The Seventh Circuit Court of Appeals concurred with the District Court of Wisconsin holding a patent to be valid and infringed. The Third Circuit Court of Appeals affirmed a decree of the District Court for the Eastern District of Pennsylvania holding the patent not infringed. The Supreme Court affirmed the Seventh Circuit Court decision and reversed the Third Circuit decision. In justifying its right to review questions of fact the Supreme Court called attention to the rule that matters of infringement were questions of fact but that the rule against disturbing questions of fact did not apply in the case of a conflict. The language of this court at 280 U. S. 35, 74 L. Ed. 153, is pertinent:

"So far as this question is concerned there is no substantial difference in the evidence in the two cases. As there was a concurrent finding in the two lower courts in the Sanitary case that they were infringed, and a concurrent finding in the two lower courts in the Dent case that they were not infringed, and the cases have been brought here because of the conflict of decision in the two circuit courts of appeals, it is clear that under these circumstances, neither properly calls for the strict application of the general rule as to the acceptance by this court of the concurrent findings of the lower courts on questions of fact, and we consider independently the question as to which of the decisions on this question is based upon the sounder reasoning and is correct."

In *Goodyear Tire & Rubber Co. v. Ray-O-Fac Co., supra*, the District Court for the Eastern District of

Illinois held a narrow patent for a flashlight battery valid and infringed? The Seventh Circuit Court of Appeals affirmed the District Court and the Supreme Court affirmed.

The Supreme Court called attention to the fact that the District Court judge made findings, which had support in the evidence relating to the question of invention and also with respect to the charges of infringement. This Court then said at 321 U. S. 278, 88 L. Ed. 724:

"The Circuit Court of Appeals re-examined the findings in the light of the evidence and accepted them. It must be a strong case in which this court will set aside these concurrent findings of two courts."

After further comments, the Court stated,

"Accepting, as we do, the findings below, we hold the patent valid and infringed."

The latest pronouncement by the Supreme Court on this point which we have noted is *Grayer Tank & Manufacturing Company, Inc., et al. v. The Linde Air Products Company, supra*, decided February 28, 1949, in which this Court, dealing with patents on electric welding, held certain claims valid and infringed and other claims invalid.

Mr. Justice Jackson, speaking for seven members of the Court, quoted that part of Rule 52(a) of the Federal Rules of Civil Procedure which reads:

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

After quoting the foregoing, the opinion continued:

"To no type of case is this last clause more appropriately applicable than to the one before us, where

the evidence is largely the testimony of experts as to which a trial court may be enlightened by scientific demonstrations. \* \* \* **A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.** *Goodyear Tire & Rubber Co. v. Ray-O-Vac Co.*, 321 U. S. 275 (60 U. S. P. Q. 386); *District of Columbia v. Pace*, 320 U. S. 698; *Williams Mfg. Co. v. United Shoe Machinery Corp.*, 316 U. S. 364 (53 U. S. P. Q. 478); *Baker v. Shofield*, 243 U. S. 114, 118." (Emphasis ours.)

We are informed that a rehearing has been granted, but not on this legal question.

Messrs. Justices Black and Douglas dissented from this holding on the ground that determination of the ultimate question of patentability cannot properly be classified as a finding of fact as to which the Supreme Court will accept concurrent findings, but that whether the thing patented amounts to a patentable invention is a question of law to be decided by the courts as such. They agreed, however, that the facts justified the holding that there was patentable discovery.

With due respect to the dissenting Justices, it must be emphasized that this Court has never deviated from and has thus recently reaffirmed by seven to two the rule that, in the absence of other conflicting decisions, the concurrent findings of the District Court and the Court of Appeals on questions of invention and infringement will not be reviewed by the Supreme Court in the absence of a *very obvious and exceptional* showing of error.

II.

The Findings of the Courts Below in Favor of Respondent on the Issues of Invention and Infringement Are Fully Supported by the Evidence, and Should Be Sustained.

A. Invention Is Clearly Present Over the Prior Art.

The prior art patents were offered as a book [Defendant's Exhibit D, R. 179, copies in Book of Exhibits 373 *et seq.*]. We will discuss them briefly.

**Nakashima, No. 1,678,573** [Book of Exhibits 376] was a Gibbs file wrapper reference, and was named by Petitioner Faulkner's expert, Mr. Harold W. Mattingly, as one of the closest prior patents [R. 214]. He urged that Gibbs claim 3, which covers a single game unit, is basically the old Nakashima game. In this he was in error, as three courts have decided. Nakashima was before the District Court in *Gibbs et al. v. T. Z. R. Amusement Corporation, supra*, as well as in the present case.

All that Nakashima discloses for the purpose of this case is a game which involves rolling several balls into pockets, and a visible signal or signals in an annunciator. The Nakashima amusement device is a single unit in which a player has *three* balls to roll. When a ball enters a pocket it lodges there, is not returnable to the player, and may or may not encounter a switch in a live circuit. The ball must remain in the pocket to hold the switch closed, and if the player rolls the three balls and none of them happen to enter a live circuit pocket, no lights are illuminated.

In the Gibbs game a single ball (an object moved over the board by a player as described in claim 3) is used which, having entered a hole and having actuated an electric switch, returns to the player for a re-play.



This is referred to in the claim by the language "a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player." Thus the claim in its inception distinguishes and departs from the principal construction and function of the Nakashima prior art patent.

Claim 3 further specifies that the indicators and the contact devices *correspondent* in number and arrangement and are subdivided into *corresponding groups*. Nakashima, upon which Petitioner so heavily relies, does not have that feature. The location of the switches for live circuits in Nakashima has no relation to the location of the lights on the panel at the end of the game board. Nakashima's whole game object is merely to roll three balls into three live switch pockets, respectively, avoiding having the balls enter dead pockets, and light up *any three* lights on the back board. Nakashima completely fails to anticipate that portion of Gibbs claim 3 preceding the clause "means for energizing" where, says the Petitioner, erroneously, the novelty lies.

Gibbs claims 6 to 10 relate to the game composed of a series of interconnected game units. A switch once actuated remains to the credit of the player by the corresponding lamp remaining energized, and a player may continue successive rolls of the ball, observe the progress of the annunciator by the lighting up of the electric lamps and thus endeavor by proper propulsion and direction of the ball to achieve a winning row either horizontal, vertical or diagonal. He continues this effort in competition with other players operating on identical units, all of the units being electrically interconnected. Nakashima is completely lacking in any such features.

**Hayashi No. 1,614,471** [Book of Exhibits 383] discloses what is called a Japanese Peanut Ping Pong Game in which the playing board is inclined downwardly away from the player instead of upwardly from, as in Gibbs, so that the objects played with are not returnable to the player. He is provided with three objects in the form of peanuts which are weighted so that, as the patentee says, instead of rolling in a direct path they will zig zag not only down the board but also partly across the same and never take the same course twice in succession [Patent, p. 1, lines 53-56]. When the three peanuts or whatever number may be allocated to the player have been projected the game is over and the player is credited by adding up the values attributed to the particular lights which have been illuminated. The weighted peanuts have to remain in the pockets in order to keep the lights lighted. Hayashi is therefore less pertinent to Gibbs than is Nakashima.

**Esmarian No. 1,612,912** [Book of Exhibits 391] which was summarily disposed of by the District Court in *Gibbs v. T. Z. R. Amusement Corporation, supra*, as being even more remote from Gibbs than Nakashima, makes provision for a plurality of balls to roll over a tally board to register a score. Any ball which falls into a pocket must remain there to maintain the electric switch closed, and the only balls which are returned to the player for re-rolling are those which have not entered a pocket. It further lacks Gibbs' features in that it is shown as a single unit and no suggestion is made of electrically inter-connecting a plurality of units for competitive purposes, and it does not have an annunciator panel and arrangement of the Gibbs character wherein horizontal, vertical or diagonal lines of light are energized to create a winner.

**Mader No. 1,622,330** [Book of Exhibits 397] adds nothing to the prior patents already discussed. This conclusion is confirmed by reference to Petitioner's Brief, page 15, where counsel says regarding Mader that "it likewise shows a game board," etc., and his description points up nothing in Mader not shown Hayashi or Esmarian.

**Schneider et al., No. 1,788,336** [Book of Exhibits 408] shows an electric ski ball game, its principal contribution, as pointed out by Petitioner in his brief at page 16, apparently being the fact that a single ball is used which returns to the player after it has actuated a switch located below one of the rings which are arranged in the conventional ski ball pattern.

**McGregor No. 1,260,691** [Book of Exhibits 411] illustrates a target apparatus wherein each of a plurality of targets is normally illuminated, and bullet impact on the target operates an electric switch to de-energize the lamp of that particular target.

**Chester No. 1,598,711** [Book of Exhibits 424] is not a ball rolling game but is said to be in the nature of a test of the player's sense of timing by his operation of a hand-wheel which he endeavors to synchronize with the beat of a musical composition played by a mechanical piano or organ.

**Wallace No. 1,697,701** [Book of Exhibits 436] illustrates a plurality of race tracks over which pigs are chased by farmers.

**Higuchi No. 1,454,968** [Book of Exhibits 450] substitutes rabbits for pigs.

**Prina et al., No. 1,518,754** [Book of Exhibits 470] shows a series of lamps, the last lamp of the series being

the goal, and the mechanism is so arranged that in order to reach the goal and win a game the winning player must operate a crank with a gradual acceleration up to about the time that the last lamp is mechanically reached and thereafter he must maintain for a predetermined length of time a uniform speed in order to cause his winning lamp to be lighted [Patent, p. 1, lines 31-40].

**Irsch et al., No. 1,458,884** [Book of Exhibits 486] is not the same Irsch patent referred to in *Gibbs et al. v. T. Z. R. Amusement Corporation, supra*, but has a cut-off feature similar to that noted by Judge Byers in his opinion in that case. The present Irsch patent is characterized by ducks on wheels mounted on tracks which are propelled under efforts of the players, the winner being the one who causes his duck to travel the full length of a track and causes the egg on the duck to be discharged into a nest or cup which actuates an electric switch.

Chester, Wallace, Higuchi, Prina, and Irsch are apparently relied upon by Petitioner on the proposition that each of these patents provides an electric circuit open until a win has been made and that when there is a winner a light or a bell rings. What Petitioner, of course, fails to emphasize is the fact that *every one of these discloses a game apparatus entirely different from that of Gibbs.*

The Petitioner's contention that it was not invention at the time Gibbs entered the field to add the win signal circuits of the multi-unit games above discussed to the board and ball game units of Nakashima, Hayashi, Mader, and Esparian, or the converse, is defective in two respects: (1) The Nakashima type of game is not the Gibbs type of game, nor is the Chester type of game the Gibbs type of game, and the combination of these two types is neither obvious nor suggested, nor feasible. The players of the

Gibbs type game complete for a result which is achieved through the exercise of skill in illuminating five annunciator lights in a row, horizontal, vertical, or diagonal, and when this has been accomplished a signal light or supplemental signaling means marks the winning annunciator panel and thereafter maintains the illumination of the winning annunciator panel while the non-winning panels are cut off either simultaneously or at the termination of a playing period as determined by an electric time switch (as in the "new" Fawn game), and since such a combination is neither suggested, nor obvious, nor feasible, when taking into consideration all of the prior art games, the contention of the Petitioner must fall of its own weight.

**Steinmetz No. 1,630,869** [Book of Exhibits 496] illustrates an electrical baseball game. **Blackmore No. 1,280,136** [Book of Exhibits 515] is a patent for a rain signal, wherein drops of rain fall into a spoon and close a switch to ring a bell, and **Lynch No. 1,685,329** [Book of Exhibits 519] illustrates an electric alarm mechanism. Why these three patents are in the record we do not learn from an examination of Petitioner's Brief, and we will not take the time of this Court to further discuss them.

The foregoing constitutes all of the prior art in the record here. An examination of such art furnishes ample support for Finding of Fact No. X in this case [R. 36], that none of the aforesaid prior art patents or the catalog (the latter is not included in the record on appeal) disclose or anticipate or suggest either singly or collectively the subject matter of the Gibbs patent No. 1,906,260 and furnish no basis for any finding or conclusion that the Gibbs patent lacks invention.



**B. Other Evidence Supports Invention.**

The fact of prior adjudication in *Gibbs et al. v. T. Z. R. Amusement Corporation et al.*, is undisputed.

Evidence of the Consent Judgments and licensed operations is uncontradicted.

Public acquiescence except infringement by Petitioner Faulkner stands as an uncontroverted fact.

Findings V, VI and VII [R. 34-35], on these facts, cannot be assailed. Such facts lend support to the primary Finding X that the Gibbs patent displays invention.

**C. Infringement of Claims 3 and 6 to 10 by Manufacture and Use of the First Fawn Game, and of Claims 3, 9 and 10 by the Second Fawn Game Was Fully Established.**

The Gibbs claims in suit were not narrowed in the face of any rejections, and no file wrapper estoppel can be invoked to restrict them.

Claim 3 was originally numbered 9; it was rejected only for a technical defect, the Examiner saying (file wrapper, page 26) that in line 10 the circuit mentioned is but indirectly introduced. A slight correction resulted in allowance. [The file wrapper was received as Defendant's Exhibit C, R. 177. It is a physical exhibit not copied in the Book of Exhibits.]

Claims 6 (original 12), 7 (original 13), 8 (original 15), 9 (original 16), and 10 (original 17) were allowed as originally filed.

The claims in suit are therefore entitled to be read as covering a game apparatus of the kind described without any implied limitations.

Petitioner has apparently abandoned any contention that the Fawn game does not infringe the claims, his defense

being that the claims are invalid because they contain some functional language. He virtually admits infringement by stating in his brief, page 28: "If claim 3 were in non-functional language \* \* \* it could not be infringed by either Fawn game, since they do not employ relays to energize their indicators." Regarding claims 6-10, he states, same page, "If these claims were written in non-functional language they would not be infringed by either Fawn game."

In applying the claims, we may take as a premise that all claims in suit *read upon* the first Fawn game, and that the elements of the claims as illustrated in the Gibbs patent *are all found in substance* in the Fawn game and in the same-relationship.

There is but one difference which need be discussed. In claim 3, Gibbs' "means for energizing said indicators as the associated contact devices are operated" is illustrated in the patent and claimed in claim 1, not in suit, as comprising relays. In the Fawn game, overbalanced or weighted switches are substituted for relays. However, overbalanced switches were known as equivalents of relays at the date of the Gibbs patent [Petitioner's Brief, p. 40, citing Schneider patent, R. 408, and Blackmore patent, R. 515], so the difference is immaterial on the question of infringement.

The word "means" in claim 3 must be construed more broadly than the corresponding word "relays" in claim 1, and such word "means" comprehends an overbalanced or weighted switch as an equivalent.

Claim 6 covers a game of Gibbs units interconnected and embodying

"means whereby when all of the indicators in any group of any one of said units have been operated

to complete a winning play, the indicators on all of the units except the winning unit will be deenergized, while the indicators at the winning unit will remain energized, for the purpose described."

This element is primarily the circuit which is established upon a win combination, a relay in which cuts off the non-winning enunciator light circuits and maintains the win unit enunciator lights energized.

The identical element is present in the first Fawn game.

Claim 7 adds to claim 6 an *independent* supplementary signal at each of the units for signaling a winning play to the players.

This signal may be identified as the signal lamp on top of each unit, which is present in the patent game, and was also present in the first Fawn game.

Claim 8 builds upon claim 7, means under the control of an operator for opening and closing the circuits of all of the units simultaneously at will.

This means is a master switch, present in both the patent and in the first Fawn game.

Claim 9 has some of the principal elements of claim 6 in that it defines a plurality of electrically connected units (of the order of claim 3), but is broader than claim 6 in the final element "*means controlled by [emphasis added] the closing of the signal circuit of the winning unit for discontinuing the signals and opening the circuits of the indicators on all other units.*"

Thus, claim 9 is infringed by the first Fawn game, which it obviously comprehends in view of the discussion of claim 6.

Respondent's expert, Bryan R. Burke, compared the Gibbs patent game and the first Fawn game [R. 98 *et seq.*] and concluded that the two seemed to him "to be almost exactly the same" [R. 102]. His testimony conflicted with that of Harold W. Mattingly, Petitioner's attorney and expert, and the District Court *resolved the conflict by adopting Burke's testimony.*

The District Court in its Finding XII, at R. 38, stated:

"The original Fawn game embodies the subject matter of the Gibbs patent No. 1,906,200 as defined in Claims 3, and 6 to 10, both inclusive. \* \* \*"

When we come to apply claims 3, 9 and 10 to the second Fawn game, we find identical comparative elements, with some inconsequential variations.

In respect to claim 3, Petitioner says (Brief, p. 28), that he does not infringe because he uses no win light or bell. This refers to the element in claim 3, "supplemental means for indicating a winning play when all of the indicators in one of said [win] groups have been energized." Petitioner admits that his signal lamps of the first game fulfilled this definition, but because he altered the game by unscrewing the bulbs says that he now has no supplemental means.

He ignores the rule that the claims of a patent are to be distinguished. Applying this rule, we call the Court's attention to the corresponding feature closely defined in claim 2 (not in issue) as "a master signal." It is obvious upon inspection that "supplementary means for indicating" is a broader term. No such things as a *master signal* lamp or bell are required. The Petitioner employs a relay which makes an audible clicking sound and flickers the lights in the winning unit. His excuse

that this occurs because he uses cheap delays is feeble indeed. It is what elements are present, and how they operate, that controls, not the reasons why he does not employ something which would not infringe.

The fact that the relay which makes the noise and flickers the lights is located in the circuit common to all the groups referred to above, does not avoid infringement. The same relay is, and has to be, also located in another circuit from which it derives its actuating energy. The presence of the relay, and its operation when energized by the completion of a win group, constitutes a supplementary means for indicating a winning play. In showing one to be equivalent to the other, it is not necessary that the infringing elements, especially if they are electrical circuits, can be matched by superimposing a diagram of one over the other and finding no deviation. Such would hardly ever be possible. It is sufficient that the purpose, result and means are similar.

Regarding claims 9 and 10, Petitioner argues that they cannot be infringed by the second Fawn game because claims 6, 7 and 8 were held not infringed by it. Petitioner, however, falls into an error in construing these claims. The holding of claims 9 and 10 to be infringed was correct and is supported by the evidence. Only claims 6 and 9 need be discussed in this connection, as claims 7 and 8 are dependent upon claim 6, and claim 10 is dependent upon claim 9.

Referring back to claim 6, the transfer circuit functions by reason of or by action of the completion of a win circuit, and is constituted to perform two functions: i.e. (1) to deenergize the non-winners, and (2) to maintain the win unit energized. In claim 9, the same general



circuit is described more broadly, and functions not by reason of or by action of the completion of a win circuit, but is *merely controlled by* a win circuit, and need be constituted to perform only *one* function, *i. e.*, to control or condition the opening of the non-winner circuits. The same meaning as "controlled by" would be properly expressed as *conditioned by*. It controls to the extent of severing the circuits and thus conditioning the win circuit to remain energized, the others to be deenergized when the time switch is thrown.

Thus, claim 9 is infringed not only by the old Fawn game, which it obviously comprehends in view of the discussion of claim 6, but is also infringed by the "altered" Fawn game.

In this "altered" Fawn game, the circuit which opens the non-winner circuits is *prepared or conditioned by*, and consequently *controlled by*, the win circuit or circuits. The time switch, which is merely an accessory, may delay the action, but when a pre-determined time elapses, the cutoff circuit functions under the control of the win circuit or circuits. Claim 9 is thus clearly infringed by the second Fawn game.

Claim 10 adds to claim 9 the audible signal, present in both Fawn games, and thus is infringed by both.

The point regarding claims 9 and 10 raised by the Petitioner discussed here, even if he were correct, would not affect the Judgment of the District Court and of the Court of Appeals, since claim 3 is not involved in the point, and the Judgment would stand on the basis of claim 3 being valid and infringed by both forms of Petitioner's games.

Respondent's expert, Burke, discussed the second Fawn game in detail, beginning at R. 119. He pointed out that the game boards, arrangement of holes, plunger, single ball, annunciator, and annunciator lights were exactly the same as in the first Fawn game. Certain signal lamps had been unscrewed, but surplus lamps were present and usable. The signal wiring was intact. A timing control had been added, and the terminal of one wire in the system changed. The system could be restored in a few minutes to its exact original operation by changing back the wire terminal referred to, and screwing in the signal lights.

Burke discussed the points wherein Petitioner was urging the fiction that the "changes" had made a different game out of it, and concluded [R. 125], that the altered game was similar to the Gibbs patent in structure, function and result.

Mr. Mattingly's conclusions conflicted with this, and the District Court *resolved the conflict in favor of Gibbs by adopting Burke's testimony.*

The District Court, in its Finding XII, at R. 38, stated:

"\* \* \* and the altered Fawn game embodies the subject matter of the Gibbs patent as defined in claims 3, 9 and 10."

The equities as between Gibbs, the Respondent, and Faulkner, the Petitioner, are all in favor of Gibbs. Such equities have been recognized by the three concurrent findings and judgments of the courts below. It remains to be analyzed whether Gibbs' patent claims in suit are, as charged by Petitioner, technically defective in form, thereby depriving him of his just due. We proceed to this consideration, under the two following points of argument:

### III.

**The Gibbs Patent Claims Definite Patentable Combinations, and in Holding Them Valid, the Court of Appeals Followed Applicable Decisions of the Supreme Court.**

#### HISTORICAL SKETCH.

The patent laws are derived from the authority of the Constitution, Article I, Section 8, Clause 8, which reads:

"The Congress shall have power \* \* \* to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their ~~respective~~ writings and discoveries."

The first patent statute was the Act of 1790 which required:

"A specification in writing, containing a description, accompanied with drafts or models, and explanations and models (if the nature of the invention or discovery will admit of a model), of the thing or things by him or them invented or discovered, and described as aforesaid, in said patents; which specification shall be so particular, and said models so exact, as not only to distinguish the invention or discovery from other things before known and used, but also to enable a workman or other person skilled in the art of manufacture, whereof it is a branch, or wherewith it may be nearest connected, to make, construct or use the same, to the end that the public may have the full benefit thereof, after the expiration of the patent term; . . ."

The Act did not refer to nor require any claims.

Section 3 of the Act of 1793 provided:

"That every inventor before he can receive a patent shall deliver a written description of his invention, and of the manner of using, or process of compounding the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known . . ."

The Act of July 3, 1832, which first provided for the reissue of patents, did not mention claims.

The first reference to patent claims occurred in the Act of 1836, Section 6 of which provided that the applicant

"shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery."

From 1836 until about the time of the Act of 1870 it was the common practice to add to the descriptive portion of the specification a single claim, although occasionally two or more were presented. The form of these early claims was specific, classified by Ridsdale Ellis<sup>1</sup> as "central definition" claims.

Specimen claims under the central definition system may be found in the patent in suit in *Rees v. Gould*, 15 Wall. 187, 21 L. Ed. 39, 40. These claims read as follows:

First: The flanges *i* on the reversing crank or arm *b* and the projection *t* on the cam-rod *c* when used for the purpose of guiding the hooks 1 and 2 into their proper position on the wrists 3 and 4 of the reversing crank or arm *b*, as herein described and set forth.

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<sup>1</sup>Patent Claims, by Ridsdale Ellis published by Baker, Voorhis & Co., Inc., New York, 1949.

Second. The use of the link *m*, or its equivalent when used in connection with the cam-rods *f* and *g*, reversing crank or arm *b*, and the crank or arm *l* as herein described and for the purpose set forth.

Third. The use of the connecting rods *o* and *g*, or their equivalents, when used in combination with the link *m*, cam-rod *c*, and levers *p* and *r*, as herein described and for the purpose set forth.

In construing these claims Mr. Justice Clifford formulated a doctrine of equivalents by instructing the jury that the withdrawal of one ingredient in a patented combination and the substitution of another which was well known at the time of the patent as a proper substitute for the one withdrawn is a mere formal alteration of the combination and if the ingredient substituted performed substantially the same function as the one withdrawn such a substitution of one ingredient for another would not avoid the charge of infringement.

The Rules of Practice of the Patent Office published August 1, 1869 contained the following sample claims:

"I claim as my invention:

First—The combination of the cutters *EE*, and the feeding rollers *II* and *JJ*, substantially as and for the purpose hereinbefore set forth.

Second—The combination with the cutters *EE*, and feeding rollers *II* and *JJ*, of the cutters *L* and *M*, substantially as and for the purpose hereinbefore set forth."



The Act of 1870 advanced the importance of claims in the patent by providing that the inventor or discoverer "shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery; . . . ."

This law for the first time required the patent claims to "distinctly claim" the invention; whereas, the Act of 1836 only required that the applicant should particularly specify and point out the invention. Since the Act of 1870 the claim has come to be regarded as the most important part of a patent; at least it is the element of the patent upon which in most cases the patent either stands or falls.

After the passage of the Act of 1870 claims were drawn in the form which Ridsdale Ellis denotes "peripheral definition." Whereas, central definition is illustrated by a specific claim usually with reference characters, reliance being placed upon the court for a broad interpretation to include equivalents, peripheral definition is, as stated by Ellis, the "marking out the periphery or boundary of the area covered by the claim and holding, as infringements only such constructions as lie within that area."

For sometime after the Act of 1870 there was a transitional period from central claims to peripheral claims, some of the latter even including reference characters. Also, patents began to appear with a greater number of claims, because under the peripheral claim system it became necessary to claim the invention in various ways to have different claims of different scope and also to protect all different features disclosed in the drawings and description.

From about 1920 on no patents were issued with claims having reference characters therein.

Under the old central definition system only a Chinese copy would literally infringe a claim and therefore the courts considered whether the definition should be expanded to cover the alleged infringement.

Under the peripheral definition system the courts proceed from the question whether the inventor has claimed his subject too broadly. If claimed too broadly, the claim may be invalid because (a) it embodies what is old in the art and is therefore void for anticipation or want of invention, or (b) it embraces subsequent independent inventions of others and therefore covers more than the patentee invented.

#### RELEVANT STATUTES CURRENTLY IN FORCE.

The following laws are currently in effect, and are controlling, the changes made by amendment since the Gibbs patent application was filed, having no bearing on the case.

35 U. S. C. 31; R. S. 4886:

"Any person who has invented or discovered any new and useful art, machine, ~~manufacture~~ or composition of matter, or any new and useful improvements thereof \* \* \* not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have

been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

35 U. S. C. 33; R. S. 4888.

"Before any inventor or discoverer shall receive a patent for his invention or discovery he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery \* \* \*"

It should be noted that the clause setting forth the requirements of claims is identical with that of the Act of 1870.

#### FUNDAMENTAL SUPREME COURT DOCTRINE.

In *Bates v. Coe*, 98 U. S. 31, 25 L. Ed. 68, 71, this Court, speaking through Mr. Justice Clifford, in 1878, summarized the philosophy of patent disclosures and claims in the following language:

"In case of a claim for a combination, where all the elements of the invention are old, and where the invention consists entirely in the new combination

of old elements or devices whereby a new and useful result is obtained, such combination is sufficiently described if the elements or devices of which it is composed are all named and their mode of operation given, and the new and useful result to be accomplished pointed out, so that those skilled in the art and the public may know the extent and nature of the claims, and what the parts are which cooperate to produce the described new and useful result. Curtis, Pat., 4th ed., sec. 289a, p. 275; Seymour v. Osborne, 11 Wall. 542 [78 U. S., XX, 38.]”

The court explained the purposes of the requirement in the following language:

“Accurate description of the invention is required by law, for ~~several~~ important purposes: (1) That the government may know what is granted and what will become public property when the term of the monopoly expires. (2) That licensed persons desiring to practice the invention may know, during the term, how to make, construct and use the invention. (3) That other inventors may know what part of the field of invention is unoccupied. Gill v. Wells, 22 Wall. 27 [89 U. S., XXII., 711]. \* \* \*

The law of that case has been re-affirmed by this Court many times. A few leading examples will be cited.

In *Morley Sewing Machine Company, et al., Appts. v. Charles B. Lancaster*, 129 U. S. 263, 32 L. Ed. 715, 716, 9 S. Ct. 279, the claims held valid were as follows, these being quoted (emphasis added) to illustrate the general language approved as permissible in combination claims:

“1. The combination, in a machine for sewing shank buttons to fabrics, of button-feeding mechanism, *apparatus* for passing a thread through the eye

of the buttons and locking the loop to the fabric, and feeding *mechanism*, substantially as set forth."

"2. The combination, in a machine for sewing shank-buttons to fabrics, of a needle and operating *mechanism*, *appliances* for bringing the buttons successfully ~~to~~ positions to permit the needle to pass through the eye of each button, and *means* for locking the loop of thread carried by the needle to secure the button to the fabric, substantially as set forth."

"8. The combination, in a machine for sewing buttons to fabrics, of button feeding, and sewing *appliances*, substantially as set forth, and feeding *appliances* and operating *mechanism* whereby the feeding devices are moved alternately different distances to alternate short button stitches with long stitches between the buttons, as specified."

"13. The combination, with button-sewing appliances, of a trough, *appliances* for carrying the buttons successively from the trough to the sewing devices, and *mechanism* for operating said appliances and sewing devices, as set forth."

#### THE PAPER BAG CASE.

One of the landmarks of the patent law is the Supreme Court opinion in *Continental Paper Bag Company v. Eastern Paper Bag Company*, *supra*, 210 U. S. 405, 52 L. Ed. 1122, 1127, 28 S. Ct. 748 (1908).

In that case the defense of want of invention was not urged before this Court, but the contention of defense counsel that "the circuit court, in its decision, virtually gave Liddel a patent for a function by holding that he was entitled to every means to cause the forming plate to oscillate about its rear edge," was a direct attack upon the



validity of the patent if construed broadly enough to be infringed.

The patent in suit was one granted to William Liddel for an improvement in paper bag machines. Claim 1 was selected as typical and read as follows (emphasis added):

"In a paper bag machine, the combination of a rotating cylinder provided with one or more pairs of side-folding fingers adapted to be moved toward or from each other, a forming plate also provided with side-forming fingers adapted to be moved toward or from each other, *means for operating* said fingers at definite times during the formative action upon the bag tube, *operating means for* the forming plate adapted to cause the said plate to oscillate about its rear edge upon the surface of the cylinder during the rotary movement of said cylinder; the whole operating for the purpose of opening and forming the bottom of the bag tube, and *means to move* the bag tube with the cylinder."

Reviewing this and the other claims in suit, the court referred to Revised Statutes, Sec. 4888 (35 U. S. C. 33) and quoted the same in a footnote.

In affirming the lower courts, and holding the patent to be infringed, Mr. Justice McKenna said (U. S., p. 420, L. Ed., p. 1129):

"The circuit court said that the 'pith' of the invention 'is the combination of a rotating cylinder with means for operating the forming plate in connection therewith, limited, however, to means which cause the plate to oscillate about its rear edge on the surface thereof,' and distinguished the invention from the prior art, as follows: 'Aside from the cylinder and the forming plate oscillating about its rear edge,

everything in these claims [the claims of the patent] is necessarily old in the arts.' It was this peculiar feature of novelty, it was said which clearly distinguished it from all that went before it. This conclusion was in effect affirmed by the circuit court of appeals. The latter court said that the folding of the bottoms of S. O. S. paper bags had been accomplished in the prior art 'both by a folding plate reciprocating upon a plane and by the operation of fingers upon a cylinder. The folding plate and the cylinder had never been combined.' \* \* \*

"The distinction between a practically operative mechanism and its function is said to be difficult to define. Robinson, Patents, §§144 *et seq.* It becomes more difficult when a definition is attempted of a function of an element of a combination which is the means by which other elements are connected and by which they coact and make complete and efficient the invention. But abstractions need not engage us. The claim is not for a function, but for mechanical means to bring into working relation the folding plate and the cylinder. This relation is the very essence of the invention, and marks the advance upon the prior art. It is the thing that never had been done before, and both the lower courts found that the machines of the Continental Company were infringements of it. It is not possible to say that the findings of those courts on that fact or on the fact of invention were clearly wrong, notwithstanding the great ability of the argument submitted against them."

This decision has been cited over and over again as authority for sustaining combination claims in which "means" followed by a functional statement identifies elements of the combination. We will later advert to this.

## DEFINITION OF COMBINATION.

This Court defined what is a combination, and distinguished a combination from its elements, in *Leeds & Catlin Co., Petitioner v. Victor Talking Machine Company et al.*, 213 U. S. 301, 53 L. Ed. 805, 29 S. Ct. 495. A patent on a sound reproducing apparatus was involved. The court, speaking by Mr. Justice McKenna, used the following language:

"A combination is a union of elements, which may be partly old and partly new, or wholly old or wholly new. But, whether new or old, the combination is a means—an invention—distinct from them. They, if new, may be inventions and the proper subjects of patents, or they may be covered by claims in the same patent with the combination."

"But whether put in the same patent with the combination or made the subjects of separate patents, they are not identical with the combination. To become that they must be united under the same co-operative law. Certainly, one element is not the combination, nor, in any proper sense, can it be regarded as a substantive part of the invention represented by the combination, and it can make no difference whether the element was always free or becomes free by the expiration of a prior patent, foreign or domestic. In making a combination, an inventor has the whole field of mechanics to draw from. This view is in accordance with the principles of the patent laws."

## GIBBS' GAME IS A TRUE COMBINATION.

Having these principles in mind promulgated by this Court, and standing at the roots of our patent system, we turn the spotlight on the subject matter of the Gibbs patent.

It is a game apparatus, a "union of elements" which are "wholly old."

A game board and a ball to roll are much older than the bowling green of Rip Van Winkle. Electric lamps were invented by Edison. Electric switches, relays, insulated wire, in fact all the constituents of the Gibbs game apparatus, were old. Gibbs drew freely from the "field of mechanics." It was the union of the elements in the manner taught by Gibbs which resulted in the new game combination.

It was different from any game apparatus known before. None of the prior art game apparatus could be used to play the Gibbs game. Parts or elements might be borrowed and rearranged and reassembled, but a stock pile of elements does not negative a new combination.

The thing as an entity must be regarded. This is not a case where Gibbs added something to Nakashima to make Nakashima's apparatus work better. It is a complete departure from Nakashima. Whether Gibbs, or one who copies Gibbs, employs a particular kind of an electric bulb, for example, is beside the point. Whether he uses an electric holding relay to maintain a light circuit closed, or a weighted switch, is inconsequential, so long as it performs its function cooperatively with the other elements, acting under given conditions to produce the specified result.

"Whether the parts are new or old, the combination is the invention and it is distinct from any of them." See *Schumacher v. Cornell*, 96 U. S. 549, 554; *Rowell v. Lindsay*, 113 U. S. 97, 101." Mr. Justice Douglas, in *The Mercoid Corporation v. Mid-Continent Investment Company et al.*, 320 U. S. 661, 667; 88 L. Ed. 376; 64 S. Ct. 268; 60 U. S. P. Q. 21, 25.

"MEANS" CLAIMS FOR COMBINATIONS  
HAVE THE SUPREME COURT'S APPROVAL

In the *Morley Sewing Machine* case, *supra*, claim 1 contained three "means" elements:

- (1) button-feeding mechanism
- (2) appliances for passing a thread, etc.
- (3) feeding mechanism, etc.

In the *Paper Bag* case, *supra*, claim 1 contained as elements:

- (1) means for operating said fingers at definite times, etc.
- (2) operating means for the forming plate adapted to cause, etc.
- (3) means to move the bag tube, etc.

This Court had before it in 1941 the Nelson patent 2,109,678 for an electrical contact mechanism for use on pin-ball game boards, in the case of *Exhibit Supply Co. v. Ace Patents Corp. et al.*, 315 U. S. 126, 80 L. Ed. 736, 62 S. Ct. 513.

No question of invalidity was decided in view of the restriction of the questions presented on appeal to that of infringement. The only consideration of validity was by Mr. Justice Black, dissenting, Mr. Justice Douglas, concurring, both of whom would have declared the patent invalid as lacking in both invention and discovery. The claim which was considered and construed by the majority as infringed by certain structures read as follows (emphasis ours):

"4. In a ball rolling game having a substantially horizontal table over which balls are rollable, the combination with said table of a substantially vertical standard anchored in said table with its lower end



carrying on the underside of the table a lead for an electric circuit and its upper end extending a substantial distance above the top surface of the table, a coil spring surrounding the standard, *means* carrying said spring pendarily from the upper portion of the standard above the table with the coils of the spring spaced from the standard to enable the spring to be resiliently flexed when bumped by a ball rolling on the table, said spring being in the aforementioned circuit and constituting a conductor, and *conductor means* in said circuit and embedded in the table at a point spaced from the standard and engageable by a portion of the spring when it is flexed to close the aforementioned circuit."

There are two means elements in this claim, and no fault was found with it in the majority opinion.

In *Williams Mfg. Co. v. United Shoe Mach. Corp.*, 316 U. S. 364, 86 L. Ed. 1537, 62 S. Ct. 1179, a majority in an opinion by Mr. Justice Roberts, upheld a patent for improvements in automatic heel lasting machines, affirming both the District Court and Circuit Court of Appeals. Mr. Justice Black dissented in an opinion curried in by Messrs. Justices Douglas and Murphy. The claims of the patent denounced by the dissenting justices, namely, claims 42, 55 and 84, but sustained by the majority, contained "means" clauses as follows:

#### Claim 42

- (1) clamping means to embrace, etc.
- (2) power operated mechanism effective to move, etc.
- (3) mechanism effective in timed relation \* \* \* to depress, etc.
- (4) mechanism operative to actuate, etc.
- (5) manually adjustable means for \* \* \* varying, etc.

Claim 55

- (1) clamping means to embrace, etc.
- (2) means to support a last, etc.
- (3) means to raise said support, etc.
- (4) means to operate the clamping means, etc.
- (5) mechanism operative \* \* \* to depress, etc.
- (6) means subsequently to operate, etc.

Claim 84

- (1) the combination with last and shoe positioning means,
- (2) operating means, etc.

Numerous other examples might be cited, but the cases chosen demonstrate that "means" claims for combinations span the years since the *Paper Bag* case, and have not been forbidden. The *Williams* case, last cited, is subsequent to *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364, 82 L. Ed. 1402, 58 S. Ct. 899, cited by Petitioner, and continues to be applicable to combination claims. The *General Electric* case did not deal with a combination and on the facts is not parallel. We refer to it in more detail later. A study of the full text of the claims in the *Williams* case shows them to be of secondary inventions, so the use of "means" is not confined to primary inventions.

Using Gibbs claim 3 as an example, we reproduce it here with the elements of the combination verbally segregated:

**Invention**

**Identified**

A game apparatus comprising

**Element (1)**

a board having

**Element (2)**

a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player.

- Element (3)** a plurality of indicators.
- Element (4)** means for electrically connecting said indicators with a source of electric current and with said contact devices.
- Qualification and mutual relationship of Elements (2) and (3)** said indicators and said contact devices corresponding in number and arrangement and subdivided into corresponding groups.
- Element (5)** means for energizing said indicators as the associated contact devices are operated.
- Element (6)** an electrical circuit common to all of said groups and open until all of the indicators in one of said groups have been energized.
- Element (7)** and supplementary means for indicating a winning play when all of the indicators in one of said groups have been energized.

Such a claim clearly sets forth the combination of elements resulting in a new game apparatus. It is neither indefinite nor ambiguous. The specific instrumentalities selected to comply with the definitions do not constitute any crucial elements or exact points of novelty. The qualification and mutual relationship of elements (2) and (3) sets the game completely apart from the Nakashima prior patent and any of the other prior patents, and requires that the context of the whole claim be thus distinguished. Thus, element (5) must relate to energizing of indicators which correspond in number and arrangement to the contact devices and are subdivided into corresponding groups. Elements (6) and (7) also are similarly related to the groups and therefore qualified.

Petitioner erroneously predicates his case on the theory that element (5) is the exact point of novelty. He explains this by saying that Gibbs and Nakashima are the same game apparatus, except that an electrical relay in Gibbs to energize the indicators differs from Nakashima who kept his light switches closed by the weight of the balls remaining on the switches. From this he concludes that a relay in the light circuit was the only thing new with Gibbs, but that other means of keeping the circuit closed was old. Therefore, says he, "means" is too broad, and destroys the entire claim.

The whole fabric of his defense is defective. The Gibbs apparatus differs from Nakashima fundamentally. The claim defines seven interrelated elements, and produces a whole, as distinguished from its parts.

A relay in a light circuit was not *per se* new with Gibbs. It was a known instrumentality. He could not predicate invention on merely inserting a relay in a light circuit. Moreover, other devices, as weights and overbalanced switches, were known as instrumentalities for keeping a light circuit closed. The selection of the instrumentality was not critical. It supplies one of seven elements in the claim. If there is any crux of the invention apart from the whole, it resides in the qualifications of elements (2) and (3), which characterize the entire structure. Consequently, "means" is a proper term to identify an instrumentality "for energizing said indicators as the associated contact devices are operated."

By analogy, the other claims in suit also define valid combinations, and in holding all claims in suit valid the Court of Appeals followed applicable decisions of the Supreme Court.

IV.

If This Court's Decision in *Halliburton Oil Well Cementing Co. v. Walker et al.*, Supra, Is Susceptible of Being Construed to Bar "Means" Claims for a Combination of Elements Irrespective of the Position of the Invention in the Art, Such Decision Should Be Explained, Clarified or Distinguished, and the Fundamental Principles of Patent Interpretation Announced by This Court in *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 52 L. Ed. 1122, 28 S. Ct. 748, Be Re-Affirmed as Controlling in Appropriate Cases.

We do not interpret this Court's decision in the *Halliburton* case as ruling out all claims for combinations in which the word "means" followed by a functional statement is employed.

However, that decision has been cited so frequently to such effect, as by Petitioner here, through the artificial selection of a "means" clause as fatally broad, indefinite, ambiguous and functional at the "exact point of novelty," that this Court would render an especial service to the interested public by express reference to the case.

One of the attorneys on Petitioner's brief, Mr. Mattingly, presented an argument on behalf of Walker in the *Halliburton* case which coincides with our exposition of patent law. Having lost that case, he joined with Mr. Fulwider in the present case to urge, as an advocate, the points which were decided against him. His true views, however, when unhampered by the duty of an attorney to his client, were recently set forth in an affidavit which he made as a friend of the Court in connection with a petition for rehearing before this Court in *Refrigeration Patents Corporation v. Stewart-Warner Corporation*, in



which affidavit he criticized the *Halliburton* decision. Inasmuch as this Court can take judicial notice of its files, we reproduce Mr. Mattingly's affidavit in an appendix to this brief.

The *Halliburton* case is one of the most widely discussed patent decisions ever handed down by the Supreme Court. Without conducting any search of current legal literature, and referring only to the Journal of the Patent Office Society, we find numerous articles and references to the decision.<sup>1</sup>

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*Halliburton Oil Well Cementing Co. v. Walker*, 71 USPQ 175. A Technical Knockout. By Albert M. Zalkind, of the Washington, D. C., Bar. February, 1947, Vol. XXIX, No. 2, p. 105. [All citations are to Journal of the Patent Office Society.] Mr. Zalkind refers to the case as a decision "which has cut deeply into the heart of patent rights."

*Halliburton v. Walker*. By Nathan A. Coun, Examiner in Div. 25 of the Patent Office. April, 1947, Vol. XXIX, No. 4, p. 289. "In the widespread discussion which has been aroused by the decision of the Supreme Court in *Halliburton v. Walker*, 593 O. G. 577, the fear has been expressed that the effect of that decision will be to make it almost impossible in many cases to draw a valid combination claim to define adequately an important improvement."

*Halliburton-Hullabaloo*. By George Benjamin, of New York. N. Y. April, 1947, Vol. XXIX, No. 4, p. 304. "The *Halliburton* decision of the Supreme Court, 71 USPQ 175, has provoked considerable excitement, so much, indeed, as to cause the New York Patent Law Association to make this decision the topic of a special meeting. True, the decision contains many remarks apt to worry the practitioners. Nevertheless, however, the writer thinks that much of said excitement is exaggerated or unnecessary."

No More New Combinations? By E. C. Walsh of Patent Division, U. S. Atomic Energy Commission. May, 1947, Vol. XXIX, No. 5, p. 362.

*Halliburton v. Walker*. By R. H. Strother, of Remington Rand, Inc. May, 1947, Vol. XXIX, No. 5, p. 375. In his closing paragraph Mr. Strother says: "I do not share Mr. Zalkind's despair. The higher courts, including the Supreme Court, have repeatedly sustained mechanical claims with a more or less wide range of equivalents."

Patent Claim Construction and the *Halliburton Oil Case*. By Carroll F. Palmer, of Washington, D. C. July, 1947, Vol. XXIX,

We precede our comments relative thereto by some preliminary thoughts.

### FUNCTIONAL CLAIMS AND FUNCTIONAL CLAUSES.

Functional claims are admittedly bad as claiming an invention too broadly. But functional clauses are not necessarily so.

No. 7, pp. 515, 524. (A reprint from February, 1947, issue of *George Washington Law Review*.) —

"The Court, apparently, took the position that, since Walker added only one new element to certain old elements of the prior art, in order to bring about the 'new patentable combination,' then attention should be directed only to the new element and the patentability of this element by itself. Such reasoning seems revolutionary in view of the multitude of decisions that hold that a patentable invention may be made by combining two or more elements, all of which are old and are unpatentable if considered separately."

*Halliburton Decision*. By K. A. Mayr, of New York, N. Y. August, 1947, Vol. XXIX, No. 8, p. 606.

*Resolution on Halliburton Doctrine*. October, 1947, Vol. XXIX, No. 10, p. 768. This is a resolution by the inventors' committee of the Patent Law Association of Chicago, originally published in *Chicago Daily Law Bulletin*, Wednesday, June 25, 1947. The resolution reads in part:

"For reasons stated in the accompanying memorandum, the committee hopes that the Supreme court will, at the first opportunity, review the question of whether a claim which defines a combination embodying an inventive concept must go beyond this inventive concept to define details of a mere part of the combination."

*Halliburton v. Walker*. By John E. R. Hayes, of Boston, Mass. November, 1947, Vol. XXIX, No. 11, p. 842. Mr. Hayes expressed the opinion that Walker's claim was not for a true combination.

*The Halliburton Oil Well Case: A Prediction*. By Philip E. Siggers, Advisor to the Bureau of Patents, USAMGIK, Seoul, Korea. December, 1947, Vol. XXIX, No. 12, p. 901. His prediction is contained in the final paragraph: "In the future the pendulum will swing back again; the Supreme Court will awaken to the necessity of securing to inventors and their assigns exclusive rights as required by the Constitution \* \* \*."

*Halliburton v. Walker*. By Arthur L. Jerome of the Patent Department of the Union Switch & Signal Company. January, 1948, Vol. XXX, No. 1, p. 51. This article reviews many facts

A functional claim is one which covers all means of arriving at a desired result, regardless of the machine employed. Because it can read on independent subsequent inventions of others it will not be allowed to stand.

In *O'Reilly v. Morse*, 15 How. 62, 14 L. Ed. 601, 623, Morse's claim 8 read:

"I do not propose to limit myself to the specific machinery or parts of machinery described in the

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in the case not mentioned in the opinion, and justifies the holding of invalidity, on the ground that Walker's claims were "broader than his invention," but that the "decision by Justice Black includes statements which are misleading, and have been misunderstood and misinterpreted."

*Halliburton-Hullabaloo Postscript*. By George Benjamin of New York. February, 1948, Vol. XXX, No. 2, p. 146.

Does *Halliburton v. Walker* Make Any Innovations? By V. I. Richard. April, 1948, Vol. XXX, No. 4, p. 251. The writer there is of the opinion "that the Halliburton decision does not announce any new law \* \* \*"

On Infringement in General and *Halliburton* Decision in Particular. By Richard Reik, of Piedmont, California. February, 1949, Vol. XXXI, No. 2, p. 112.

*Halliburton v. Walker—A Symposium*, Part I—General, by M. A. Crews; Part II—*Gill v. Wells* as a Precedent for the *Halliburton* Decision, by Andrew R. Klein; Part III—The Issue of Infringement in *Halliburton v. Walker*, by L. T. Phelan; Part IV—Claim Written to Satisfy Supreme Court Requirements for Walker Patent, by Joseph G. Jackson; Part V—Conclusion, by M. A. Crews, March, 1949, Vol. XXXI, No. 3, p. 176. (This was a series of papers delivered before the Philadelphia Patent Law Association February 26, 1948.) Mr. Crews believes that the Supreme Court became confused between the requirements of the statute with respect to the specification and the requirements with respect to claims, "for the court refers again and again to the inadequacy of the claim as a description of the invention, to the failure to include in the claim physical details, and to the failure of Walker to provide in his claim an explanation of the principle of his invention, and the best mode of applying it." Mr. Phelan commented, p. 193: "It is believed the Court erred in finding infringement of any of Walker's claims, and it is indeed unfortunate that the Supreme Court did not reverse upon that ground instead of holding the claims invalid for non-compliance with the statute."

"Means" at the Exact Point of Novelty. By Stuart Peterson, Assistant Examiner, Div. 60, U. S. Patent Office. March, 1949, Vol. XXXI, No. 3, p. 195.

foregoing specification and claims; the essence of my invention being the use of the motive power of the electric or galvanic current, which I call electro-magnetism, however developed for marking or printing intelligible characters, signs, or letters, at any distances, being a new application of that power of which I claim to be the first inventor or discoverer."

In holding that this claim was too broad, the court said,  
14 L. Ed. 623:

"If this claim can be maintained, it matters not by what process of machinery the result is accomplished. For aught that we now know some future inventor, in the onward march of science, may discover a mode of writing or printing at a distance by means of the electric or galvanic current, without using any part of the process or combination set forth in the plaintiff's specification. His invention may be less complicated—less liable to get out of order—less expensive in construction and in the operation. But yet if it is covered by this patent the inventor could not use it, nor the public have the benefit of it without the permission of this patentee."

Numerous other examples might be cited, but would be surplusage, because it is well recognized that where a claim as a whole is functional it is objectionable.

We may next examine the rule announced by this Court outlawing functional language at "the exact point of novelty."

The claim selected as typical in *General Electric Co. v. Wabash Appliance Corp.*, *supra*, 304 U. S. 364; 58 S. Ct. 899, 82 L. Ed. 1402, (1938), was claim 25 in Patent No.

1,410,400 relating to tungsten filaments for incandescent lamps. The claim read as follows:

"25. A filament for electric incandescent lamps or other devices, composed substantially of tungsten and made up mainly of a number of comparatively large grains of such size and contour as to prevent substantial sagging and offsetting during a normal or commercially useful life for such a lamp or other device."

This Court, speaking through Mr. Justice Reed, condemned such a claim as "invalid on its face" (U. S. 368, L. Ed. 1405). The court further pointed out that in a limited field the variant must be clearly defined, and that the patent involved was one in a series of patents all dealing with filaments, and that the claim uses indeterminate adjectives which describe the function of the grains to the exclusion of *any structural* definition.

The opinion pointed out that the vice of a functional claim exists not only when a claim is wholly functional, if that is ever true, but also when the inventor is painstaking when he recites what has already been seen, and then uses "conveniently functional language at the exact point of novelty."

The court recognized (U. S. p. 371, L. Ed. p. 1407) that:

"A limited use of terms of effect or result, which accurately define the essential qualities of a product to one skilled in the art, may in some instances be permissible and even desirable. \* \* \*"



The claim was not for a combination of elements but for a product, namely, a filament for electric incandescent lamps and made of tungsten. The "exact point of novelty," if any, presumably would have resided in the specific details of the granular construction of the tungsten wire, which details were lacking.

#### THE HALLIBURTON CASE.

In *Halliburton Oil Well Cementing Co. v. Walker*, *supra*, 329 U. S. 1, 91 L. Ed. 3, 67 S. Ct. 6, the claims involved were combination claims covering a Lehr and Wyatt apparatus composed of old and well-known devices to measure the time required for pressure waves to move to and back from the fluid surface of an oil well, to which Walker added a well-known device which would make the regularly appearing shoulder echo waves more prominent on the graph and easier to count. The device added was a mechanical accoustical resonator.

Claim 1 of the patent, accepted as a typical example, read as follows:

"In an apparatus for determining the location of and obstruction in a well having therein a string of assembled tubing sections interconnected with each other by coupling collars, means communicating with said well for creating a pressure impulse in said well, echo receiving means including a pressure responsive device exposed to said well for receiving pressure impulses from the well, and for measuring the lapse of time between the creation of the impulse and the arrival at said receiving means of the echo from said obstruction, and means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

This Court, speaking through Mr. Justice Black, pointed out (U. S. p. 8, L. Ed. p. 9):

"But no one of the claims on which this judgment rests has even suggested the physical structure of the acoustical resonator. No one of these claims describes the physical relation of the Walker addition to the old Lehr and Wyatt machine. No one of these claims describes the manner in which the Walker addition will operate together with the old Lehr and Wyatt machine so as to make the 'new' unitary apparatus perform its designed function."

Further on the court continued (U. S. p. 8, L. Ed. p. 9):

"The language of the claim thus describes this most crucial element [the acoustical resonator] in the 'new' combination in terms of what it will do rather than in terms of its own physical characteristics or its arrangement in the new combination apparatus."

The *General Electric* and *Halliburton* cases emphasize that the violence done is in using functional language to describe the main feature of the invention. The *General Electric* case involved a "single means" claim ~~and on its~~ face. The *Halliburton* case dealt with a combination claim in an art "crowded almost, if not completely, to the point of exhaustion."

This Court stated no objection to the first three elements of the claim, two of which were "means" clauses. These first three elements described a prior art apparatus. The court held in substance that the addition of the specific form of acoustical resonator and its structural relationship with the Lehr and Wyatt apparatus was the crux of the invention, and because claimed by a "means" clause in functional form, the claim was bad.

Such law is said by this Court to be not inconsistent with the *Paper Bag* case, as pointed out by Mr. Justice Black (U. S. p. 13, L. Ed. p. 12), who stated:

"In that case [*Paper Bag* case], however, the claims structurally described the physical and operating relationship of all the crucial parts of the novel combination."

The difficulty which faces the Patent Office, patentees and the patent bar, when endeavoring to abide by the *Halliburton* case, lies in ascertaining what is an exact point of novelty or the most crucial element, in a combination.

Granting that the provisions of the statutes requiring particularity apply to combination claims, and that such claims must be definite and certain, is not that requirement fulfilled when (the claim being otherwise good) an element either known to the art or noted by the patentee to be in the form of two or more instrumentalities capable of substitution, is defined as "means" followed by a recitation of its function in relation to another element with which it co-acts?

Such an element might be the thing that creates the combination, i. e., something more than the sum of its parts, and under the *Halliburton* case could be singled out by an infringer as the exact point of novelty or the most crucial element. Yet to require the patentee to specifically name the instrumentality or specifically describe its structure and arrangement with the other elements would, in many cases, deprive him of fair protection.

Actually, the "pith" of the invention (exact point of novelty, or crucial element) in the *Paper Bag* case, if analyzed according to Petitioner's interpretation of the

*Halliburton* decision, was defined by the word "means" followed by a functional statement, in the following language:

"operating means for the forming plate adapted to cause said plate to oscillate about its rear edge upon the surface of the cylinder during the rotary movement of said cylinder."

That gives rise to a serious confusion. The two cases are in conflict if Petitioner's analysis is correct.

We suggest that there may be no *exact point* of novelty in a true combination, rather that the exact point of novelty is in the *concept of the combination*, and that the patent claims in the *Halliburton* case rather than having an *exact point of novelty* or a crucial element, were merely (a) broader than the invention or (b) ~~lacking in invention~~, or (c) aggregations. Those doctrines are well understood. The claims may have been broader than the invention for the reason that Walker simply adapted a particular form of resonator to the Lehr and Wyatt echo device, but broadly claimed the function of any resonator. The claims may have lacked invention for the reason that only expected skill was needed to make this adaptation. They may have defined only aggregations because the echo device and the resonator, as defined, separately performed their original functions ~~without achieving something new springing from their association~~.

A holding on any of these grounds would have protected the public against the vices charged. If the Walker invention resided in the detailed manner in which he *brought together* the old parts, as indicated in the opinion, and the art was crowded almost to the point of exhaustion, he should be relegated to his narrow claims, and his broad

claims be voided without reference to an exact point of novelty or a most crucial element, as there was none in the broad combination claims. Combination claims, which are subject to the same rigid requirements as to particularity, etc., should stand or fall on principles of law long applied.

We do not ~~pre-sume~~ to criticize the result reached in the *Halliburton* case, but we respectfully suggest that the reasoning and certain language in the opinion ~~has~~ given rise to widespread uncertainty, and that a clarification could be announced which would disperse this uncertainty in the minds of Patent Office officials, inventors, manufacturers, and members of the patent bar.

The statute (R. S. 4888, 35 U. S. C. 33) requires that the ~~written description~~, i. e., the descriptive part of the specification as distinguished from the claims, to be "in such full, clear, concise, and exact terms" so that one skilled in the art may "make, construct \* \* \* and use the same." In the case of a machine or apparatus he shall explain the principle and the best mode "in which he has contemplated applying that principle \* \* \*."

As to the *claims*, the same statute in a clause set apart from the other by a semi-colon, directs that he "shall particularly point out and distinctly claim the \* \* \* combination which he claims as his invention or discovery."

This clearly separates the requirements for the description and the claims, a distinction recognized in *Merrill v. Yeomans, et al.*, 94 U. S. 568, 24 L. Ed. 235; cited in the *Halliburton* decision.

An inventive concept in a combination is fundamentally recognized by the statute, and while the descriptive part of the specification should be full and complete in detail, when it comes to the claims particularity is required only to the



extent of *pointing out and distinctly claiming the combination* asserted to be new.

As an example, two boards fastened together might constitute a combination. The fastening means could be nails, boards, screws, dowel pins or glue. To specify "nails" in a claim for the combination would deprive the patentee of a fair range of protection. To claim in combination the boards, "and means for fastening the boards together" would comply with the statute.

It appears that this Court did not distinguish in the *Halliburton* case between the description and the claims of a patent, and that the Court applied the requirements for the description, to the claims. Mr. Justice Black in the preliminary part of the *Halliburton* opinion noted that

"Petitioner's application to this Court for certiorari urged, among other grounds, that the *claims* held valid failed to make the 'full, clear, concise, and exact' *description* of the alleged invention required by Rev. Stat. §4888, 35 USCA §33, 9 FCA title 35, §33, as that statute was interpreted by us in *General Electric Co. v. Wabash Appliance Corp.*, 304 US 364, 82 L. ed 1402, 58 S. Ct 899. This statutory requirement of distinctness and certainly *in claims* is important in patent law. We granted certiorari to consider whether it was correctly applied in this case." 326 US 705, 90 L. ed 416, 66 S. Ct. 90." (Emphasis ours.)

Apparently, counsel for Halliburton by reference to the wrong part of the statute quoted by Mr. Justice Black led this Court into such a position, and having adopted it the Court then relied heavily upon the early Supreme Court decision in *Gill v. Wells*, 22 Wall. (U. S. 1), 22 L. Ed. 666, quoting therefrom to the proposition that the re-

requirement of the Patent Act directing that the invention shall be fully and exactly described, applies with as much force to a combination as to any other class of invention. Actually, the *Gill v. Wells* case was concerned primarily as to whether a reissue patent was for the same invention as the original patent, and the language from *Gill v. Wells* referred to the description and not to the claims. This Court's question for determination in *Halliburton* was set forth in the following language:

"We must, however, determine whether, as petitioner charges, the claims here held valid run afoul of Rev Stat §4888, 35 USCA §33, 9 FCA title 35, §33 because they do not *describe* the invention but use 'conveniently functional language at the exact point of novelty.' *General Electric Co. v. Wabash Appliance Corp.*, *supra* (304 US<sup>at</sup> 371, 82 L ed 1407, 58 S. Ct 899)." (Emphasis ours.)

After commenting that some of the claims not in suit did describe the tuned acoustical pipe showing its structure, its working arrangement in the alleged new combination and the manner of its connection with the other parts, the Court found these things lacking in the claims in suit and concluded, "Thus the claims failed adequately to depict the structure, mode, and operation of the parts in combination."

Such language further reflects the incorrect premise for the reasoning in the opinion because the claims for a combination, while they must be definite, do not have to describe details of the structure, mode and operation of the parts except so far as may be required by the prior art, and are sufficient if in clear and certain language they define the metes and bounds of the combination, i. e., identify the several elements either by the names of

the parts or by a word such as "means" accompanied by a functional statement as to how such "means" co-acts with one or more of the other elements, so that when the whole claim is read it does not describe a specific structure or mode of operation but rather a boundary within which the detailed structure, and mode of operation explained in the description, or substituted therefor, may be comprehended.

Otherwise, the attorney will be constantly plagued by the question: When can I claim "means" and when must I specifically identify the instrumentality? And the inventor will never know whether he must apply for a plurality of patents or take his chances on a "means" claim. He will be continuously haunted by doubt as to what element in his combination a court will regard as the exact point of novelty or the most crucial element. If he or his attorney guesses wrong, he has no patent.

An illustration of this dilemma is produced by Petitioner's contention here that the element we have numbered (5) of the Gibbs claim 3 is the exact point of novelty or the crucial element. This, of course, we deny, as previously explained. The example of this element illustrated in the drawings and description includes a relay.

This relay in Gibbs' light circuit holds a switch closed by utilizing the magnetic force induced by a coil. Any weighted switch is held closed by the force of gravity pulling on the weight. Both were known to be substitutes. Gibbs could not claim both in one claim by their names, as alternatives are not allowed. He could not claim them in separate claims in the same patent as species unless he had a generic claim. A generic claim must be broad enough to include the species. What choice has a patentee, aside from a plurality of patents, except the word "means"

or a similar expression? Its use is founded on logic, and it should be preserved.

Gibbs said in his patent (R. 303, line 98):

"In the accompanying drawings I have shown a preferred form of invention, subject to modification within the scope of the appended claims without departing from the spirit thereof."

He thus contemplated possible substitutions.

His claim bars no one from inventing, patenting and using a new relay, or an improved form of weighted switch, or any other similar instrumentality, or any game apparatus which is actually different. And anyone using an improved relay in an infringing game apparatus would not be infringing because of the new relay but because the whole combination falls within the protection of the claim on the **game apparatus**. No improver of an element *per se* has ever been given the right, by virtue of his improved element, to an earlier true combination patented by another.

By the same token, no inventor of an apparatus which is a combination should be denied fair protection because someone might in the future invent an improvement in one of the parts of that combination. Fair protection must include whatever equivalents for a given part the state of the art and other circumstances will permit.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

HERBERT A. HUEBNER,

*Attorney for Respondent.*

## APPENDIX.

AFFIDAVIT OF HAROLD W. MATTINGLY ACCOMPANYING  
THE PETITION FOR REHEARING OF ORDER DENYING  
PETITION FOR WRITS OF CERTIORARI FILED IN THE  
SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1946, NOS. 1273 AND 1274, REFRIGERATION  
PATENTS CORPORATION V. STEWART-WARNER COR-  
PORATION, ETC.

State of California, County of Los Angeles—ss:

Harold W. Mattingly, being first duly sworn, deposes  
and says:

That I am a member of the State Bar of California spe-  
cializing in the practice of patent law in the City of Los  
Angeles, State of California:

That I was the attorney for Cranford P. Walker, *et al.*  
in the case of *Halliburton Oil Well-Cementing Company v.*  
*Cranford P. Walker, et al.*, 329 U. S. 1.

That immediately subsequent to the publishing of the  
opinion of the Supreme Court in *Halliburton v. Walker*,  
I received inquiries by letter and telephone from various  
parts of the United States, namely, New York, Washing-  
ton, St. Louis, Chicago, San Francisco and Los Angeles,  
as to the proper interpretation to put upon the doctrine  
established by that decision:

That each such inquirer expressed fear that lower courts  
following said opinion literally would hold substantially  
all patents to combinations of elements invalid if the ele-  
ments were defined any more broadly than the one specific  
embodiment set forth in the specification:

That all of the inquirers expressed their opinion that  
the *Halliburton v. Walker* decision had destroyed the long



established "Doctrine of Equivalents" and the rules by which equivalency could be tested;

That affiant and none of the inquirers have been able to suggest any form of claim expression which could define an invention residing in a combination of elements in any breadth of language which does not fall within the prohibitions expressed or logically implied in the Halliburton opinion, and particularly where the elements are in themselves old in the art;

That in affiant's opinion the decision of the Court of Appeals in the 7th Circuit in the cases of *Refrigeration Patents Corporation v. Steuart-Warner Corporation* and *Potter Refrigeration Corporation v. Steuart-Warner Corporation*, 72 U. S. P. Q. 255, is typical of the manner in which Courts will interpret the *Halliburton v. Walker* decision and will feel justified in holding invalid meritorious combination patents merely because the old and well known elements used in the combination are defined in the claims in language which identifies them sufficiently to those skilled in the art but which definition may not, to the non-technical and non-scientifically trained members of the court, seem sufficient;

That in several applications now being prosecuted before the Patent Office by affiant the Examiners have rejected claims relying on the *Halliburton v. Walker* decision in support thereof and that each different Examiner has placed a different construction on the decision, creating the confusing situation that a claim would be held patentable by one division and the same claim be held unpatentable by another division.

That in affiant's opinion the Supreme Court should welcome the first opportunity to clarify, if not overrule, its

opinion in the *Halliburton v. Walker* case so that the chaotic uncertainty created by it may be cleared up for the benefit of the Courts, the Patent Bar and industry relying on clear-cut patent doctrines for the conduct of its business.

HAROLD W. MATTINGLY.

Subscribed and sworn to before me this 20th day of June, 1947.

MARJORIE MCKAY,

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission Expires July 15, 1949.

(Notarial Seal)

Supreme Court of the United States

October Term, 1949.

No. 19

19

TODD C. FAULKNER,

*Petitioner*

vs.

JOHN T. GRASS,

*Respondent*

PETITION OF TODD C. FAULKNER FOR  
HEARING AND FOR STAY OF MANDATE

ROBERT W. FULWIDER,

General of America Building, Los Angeles

*Attorney for Petitioner*

JAMES P. BURNS,

*Of Counsel*

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IN THE  
**Supreme Court of the United States**

October Term, 1949

No. 49

TODD C. FAULKNER,

*Petitioner,*

JOHN T. GIBBS,

*v.*

*Respondent.*

**PETITION OF TODD C. FAULKNER FOR RE-  
HEARING AND FOR STAY OF MANDATE**

Comes now the above-named Petitioner, Todd C. Faulkner, and presents this, his Petition for a Rehearing of the above-entitled cause and for a Stay of the Mandate of this Court until final disposition of the case, and in support thereof respectfully shows:

This Court by a *per curiam* decision dated November 7, 1949, affirmed the judgment below, stating that the case of *Halliburton Oil Well Cementing Co. v. Walker*, 329 U. S. 1 (1946), was "inapposite." The Court then said:

"In the instant case, the patent *has been sustained because of the fact of combination*, rather than the novelty of any particular element . . . . (Emphasis added.)"

But how can this "fact of combination" distinguish the instant case from the *Halliburton* case, when the claims involved in the *Halliburton* case were also sustained by the lower courts on the ground of combination, rather than the novelty of any particular element?

The claims in this case and those in the *Halliburton* case are substantially identical in form. Both are combinations of admittedly old elements. Both define all of the essential elements in terms of "means."

In what respect then is the *Halliburton* case inapposite?

### The Decisions of the Ninth Circuit Court of Appeals in the *Halliburton* Case.

In the first decision of the Ninth Circuit Court of Appeals in the case of *Halliburton Oil Well-Cementing Co. v. Walker*, 146 F. 2d 817, the Court, in speaking of the apparatus of the claims in suit stated:

"The apparatus or system claimed is old, as indeed are all of the other elements of his combination."  
(Emphasis added.)

With respect to the merit of the invention in the *Halliburton* case, the Court said:

"Walker made a very substantial improvement over Lehr and Wyatt, notwithstanding it is conceded that both his recorder and his amplifier, considered by themselves are old in the art. \* \* \* He has combined features which achieve a new result or at least an old result in a better way. \* \* \*

"We think too that Walker specified and claimed his improvements with sufficient distinctness and clarity to comply with the statute." (Emphasis added.)

In denying Halliburton's Petition for a Rehearing, in *Halliburton Oil Well Cementing Co. v. Walker et al.*, 149 F. 2d 896, the Court in response to defendant's contention that the claims in suit were bad for functionality under the doctrine of *General Electric v. Wabash*, 304 U. S. 364, 37 U. S. P. Q. 466 and *Davis Sewing Machine Co. v. New Departure Mfg. Co.*, 217 Fed. 775, sought to distinguish the *General Electric* case by stating:

"Here, (in the Halliburton case) the claims are for a combination of elements." (Emphasis added.)

Judge Denman filed a separate opinion concurring in the denial of a rehearing in the *Halliburton* case in which he stated:

"Appellant's principal contention on its Petition for Rehearing concerns the patenting of a combination of functional means such as claimed in typical claims 1 and 14 cited in the opinion. \* \* \*

"Since the combination of all such means has novelty and usefulness, I agree in the denial of the Petition for Rehearing." (Emphasis added.)

It is abundantly clear that the Ninth Circuit Court of Appeals sustained the claims in the *Halliburton* case, "because of the fact of combination rather than the novelty of any particular element."

In the *Halliburton* case, this Court reversed the concurrent holdings below and decided as a matter of law that the claims there in suit were functional and void under R. S. 4888, in spite of the fact that they were for a combination.

But in the instant case this Court has refused to disturb the concurrent findings below because the claims are for a combination.

It is respectfully submitted that the confusion alleged by Respondent to have resulted from the *Halliburton* decision will be compounded many times over, unless the Court's views on the issues involved herein are clarified.

### Comparison of the Claims in the *Halliburton* Case With Those in the Instant Case.

To more clearly show the identity in form of the claims in the *Halliburton* case and the instant case, we here reproduce Walker's claim 1<sup>st</sup> in suit in the *Halliburton* case and Gibbs' claim 3 in suit in this case. To facilitate comparison, we adopt the outline of the Walker claim as set forth in Judge Denman's concurring opinion denying *Halliburton's* Petition for Rehearing (149 F. 2d 896) and an outline of Gibbs' claim 3 substantially as set forth on page 7 of our Opening Brief.

#### *Walker Claim 1*

(A) "In an apparatus for determining the location of an obstruction in a well having therein a string of assembled tubing sections interconnected with each other by coupling collars.

(B) *means* communicating with said well for creating a pressure impulse in said well.

#### *Gibbs Claim 3*

(A) "A game apparatus comprising a board having a plurality of contact devices thereon adapted to be engaged by an object moved over the board by a player, a plurality of indicators.

(B) *means* for electrically connecting said indicators with a source of electric current and with said contact devices, said indicators

and said contact devices corresponding in number and arrangement and subdivided into corresponding groups,

(C) *echo-receiving means* including a pressure responsive device exposed to said well for receiving pressure impulses from the well and for measuring the lapse of time between the creation of the impulse and the arrival at said receiving means of the echo from said obstruction,

(C) *means* for energizing said indicators as the associated contact devices are operated,

(D) an electric circuit common to all of said groups and open until all of the indicators in one of said groups have been energized,

(D) and *means* associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

(E) and *supplementary means* for indicating a winning play when all of the indicators in one of said groups have been energized."



~~In the Halliburton case, all of the elements going to make up the claimed combination were admittedly old in the art. In the instant case all of the elements going to make up the claimed combination are likewise admittedly old in the art.~~

~~In the Halliburton case, the combination of Walker's claim 1 included three separate elements defined in terms of "means," to-wit: "means communicating," "echo-receiving means," and "means for tuning." In the instant case, the combination of Gibbs' claim 3 includes three separate elements defined in terms of "means," to-wit: "means for connecting," "means for energizing," and "means for indicating."~~

~~In the Halliburton case, the Ninth Circuit Court of Appeals held Walker's claim 1 valid because it was a combination of element (all old). In the instant case, the Ninth Circuit Court of Appeals held Gibbs' claim 3, also made up of old elements, to be valid for the same reason.~~

~~In the Halliburton case, this Court in spite of the concurrent findings below held as a matter of law that the combination claims there in suit were invalid for functionality under R. S. 4888.~~

~~In the instant case, this Court has taken the position that the findings are not "clearly erroneous," and consequently that the claims in suit are valid because they are for a combination.~~

~~In the Halliburton case, all but one of the elements of each of the claims in suit were shown in the prior Lehr~~

and Wyatt patent No. 2,047,974. This remaining element, lettered D, in Judge Denman's opinion and in our outline, *supra*, was described in functional language as "means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

This Court held, in line with its prior decisions, that the use of functional language to describe the sole element not shown in the prior Lehr and Wyatt patent rendered the claim bad for functionality.

In the instant case, all but one of the elements of the Gibbs claims in suit present in Petitioner's game are also shown in a single prior art patent, to-wit: Nakashima, No. 1,678,573. The remaining element lettered C in our outline, *supra*, is described in purely functional language as

"means for energizing said indicators as the associated contact devices are operated,"

It is apparent therefore that Gibbs' claim 3 in suit uses functional language to describe the sole element not shown in the prior Nakashima patent, to-wit: the relays R and their armatures R' used by Gibbs to energize his indicator lamps.

The other claims here in suit likewise use functional language to describe the sole element therein not shown by the Nakashima patent. In the interest of brevity we

have not outlined them here. They are outlined and discussed at length in our briefs on file.

With such a clear parallel between the claims in the instant case and the *Halliburton* case, we are unable to understand the Court's position herein.

The *Halliburton* decision held claims for a combination of old elements *bad* for functionality. This case holds claims which are on all-fours with the claims in the *Halliburton* case, *good* because they are for a combination of elements, admittedly old.

It is submitted that these decisions are inconsistent and will cause endless argument and divergent opinions both in and out of the Courts until they are reconciled.

The principal question raised in the petition for certiorari herein, and applicable to all of the claims in suit, was as follows:

*Question 1*—Is the doctrine of *Halliburton Oil Well Cementing Co. v. Walker, et al.*, 329 U. S. 1, 67 S. C. 6, 71 USPQ 175, condemning the use of indefinite and functional language at the exact point of novelty in patent claims for a combination of mechanical and acoustical elements, applicable to claims for a combination of mechanical and electrical elements where the only feature of novelty in the claims is described broadly in terms of "means," or is said decision to be ignored as was done by the Court of Appeals in this case?

A secondary question, applicable only to claims 9 and 10 in suit, was also raised:

*Question 2*—Where a court holds an accused apparatus not to infringe certain patent claims because said apparatus does not include an essential element of said claims, is it not contrary to fundamental law and logic for the court in the same decision to hold other claims of said patent which specify the *same essential element*, infringed by the said accused apparatus?

These questions are firmly grounded in the facts of this case and arise as a result of the decisions below. Certiorari was granted to consider them. Neither has been decided.

Petitioner sincerely believes that it will be to the best interest of all concerned for a rehearing to be granted in this case to give the Court an opportunity to clarify its position on the issues involved, so that the lower Courts, the Patent Office and the patent profession can know what the law of this Court is as respects functionality in combination claims.

Additionally, it is thought that since this case originated in the Ninth Circuit, and since Mr. Justice Douglas, who was unable to participate in the decision due to his unfortunate accident, will now be able to participate in the consideration of the case, and since the decision was *per curiam*, a reconsideration of the issues herein is both timely and appropriate.

The issues are important, and the supersedeas bond on file is adequate, and consequently it is believed that the mandate should be stayed pending the final outcome of the case.

For the foregoing reasons, it is respectfully urged that this Petition for Rehearing and the Stay of Mandate be granted, and that the judgment of the United States Court of Appeals for the Ninth Circuit be, upon further consideration reversed.

Respectfully submitted,

ROBERT W. FULWIDER,

*Attorney for Petitioner.*

JAMES P. BURNS,

*Of Counsel.*

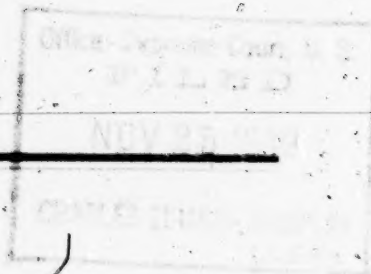
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I, Robert W. Fulwider, Attorney for the above-named Petitioner, do hereby certify that the foregoing Petition for Rehearing and Stay of Mandate in this cause is presented in good faith and not for delay.

ROBERT W. FULWIDER.

November 18, 1949.





IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949.

No. 19.

TODD C. FAULKNER, *Petitioner.*

v.

JOHN T. GIBBS, *Respondent.*

**BRIEF OF RESPONDENT IN OPPOSITION TO  
PETITIONER'S PETITION FOR REHEARING.**

HERBERT A. HUEBNER,  
FRANCIS D. THOMAS,  
WM. WALLACE COCHRAN,  
*Attorneys for Respondent.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949.

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No. 19.

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TODD C. FAULKNER, *Petitioner*,

v.

JOHN T. GIBBS, *Respondent*.

---

**BRIEF OF RESPONDENT IN OPPOSITION TO  
PETITIONER'S PETITION FOR REHEARING.**

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In view of the content of the present petition, which merely reiterates arguments previously advanced to this Court in the petition for certiorari, the briefs and oral argument, it would appear that no reply is necessary.

In order, however, to point up the fact that this Court has, by its opinion, set at rest the conflict of views which resulted from the *Halliburton* opinion we present the following observations.

Contrary to petitioner's assertions, this Court's *Per Curiam* decision has clarified the confusion caused by the *Halliburton* case. Thus, the decision of this Court is in strict harmony with the time-honored doctrine so clearly

elaborated upon in the *Paper Bag* case, to the effect that a patent shall be sustained where patentability rests alone upon a new combination of elements, as contra-distinguished from a situation wherein the *sole* invention resides in an element *per se*.

It is now perfectly clear from the decision in this case that it is proper for an inventor to claim his new combination of elements by employing terms which will embrace a fair range of equivalents of the elements he has disclosed, irrespective of whether all the elements are old or one or more are novel.

Indeed, if the law were otherwise nearly all combination patents would be worthless, for the reasons stated by Judge Learned Hand in the recent decision of *Philip A. Hunt Company v. Mallinckrodt Chemical Works* (Decided October 28, 1949) 83 USPQ 277:

" . . . If the claims were limited to the 'concise and exact terms' in which the specifications ordinarily describe a single example of the invention, few, if any, patents, would have value, for there are generally many variants well-known to the art, which will at once suggest themselves as practicable substitutes for the specific details of the machine or process so disclosed. It is the office of the claims to cover these, and it is usually exceedingly difficult, and sometimes impossible, to do so except in language that is to some degree 'functional'; for obviously it is impossible to enumerate all possible variants. Indeed, some degree of permissible latitude would seem to follow from the doctrine of equivalents, which was devised to eke out verbal insufficiencies of claims. . . ."

The petition for rehearing should, accordingly, be denied.

HERBERT A. HUERNER,

FRANCIS D. THOMAS,

WM. WALLACE COCHRAN,

*Attorneys for Respondent.*